San Andreas Revised Statutes 2026

TITLE 12

PROFESSIONS AND OCCUPATIONS

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019, resulting in the addition, relocation, or elimination of sections as well as subject matter. For amendments to this title 12 prior to 2019, consult the 2018 San Andreas Revised Statutes and the San Andreas statutory research explanatory note beginning on page vii in the front of this volume. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index.

Cross references: For practicing a profession or operating a business without a license, see § 16-13-306; for rule-making procedures and license suspension and revocation procedures by state agencies, see article 4 of title 24; for an alternative disciplinary action for persons licensed, registered, or certified pursuant to this title 12, see § 24-34-106; for disposition of money collected under this title 12, see §§ 24-35-101 and 24-36-103.

GENERAL

ARTICLE 1

General Provisions

12-1-101. Short title. The short title of this title 12 is the "Professions and Occupations Act".

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 613, § 1, effective October 1.

12-1-102. Scope of article. This article 1 applies to every article in this title 12 except to the extent otherwise specified in another article of this title 12.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 613, § 1, effective October 1.

12-1-103. Definitions. As used in this title 12, unless the context otherwise requires:

(1) "Department" means the department of regulatory agencies created in section 24-1-122.

(2) "Executive director" means the executive director of the department or the executive director's designee.

(3) "Profession or occupation", "profession", or "occupation" means an activity subject to regulation by a part or article of this title 12.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 613, § 1, effective October 1.

DIVISION OF REAL ESTATE

ARTICLE 10

Real Estate

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 10 was numbered as parts 1, 2, 4, 6, 7, 8, and 9 of article 61 of this title 12 prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

Cross references: For the penalty for selling land twice, see § 18-5-302.

PART 1

COMMON DEFINITIONS

12-10-101. Definitions. As used in this article 10, unless the context otherwise requires:

(1) "Director" means the director of the division of real estate.

(2) "Division" means the division of real estate.

(3) "HOA" or "homeowners' association" means an association or unit owners' association formed before, on, or after July 1, 1992, as part of a common interest community as defined in section 38-33.3-103.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 614, § 1, effective October 1.

Editor's note: Subsection (1) is similar to former §§ 12-61-702 (7) and 12-61-902 (3); subsection (2) is similar to former §§ 12-61-702 (8) and 12-61-902 (4); and subsection (3) is similar to former §§ 12-61-101 (1.2) and 12-61-401 (2.5), as those sections existed prior to 2019, and the former § 12-10-101 was relocated to § 12-110-101.

PART 2

BROKERS AND SALESPERSONS

Cross references: For the exemption of real estate brokers and sales representatives from certain provisions of the "San Andreas Securities Act", see §§ 11-51-402 (3) and 11-51-405 (2).

12-10-201. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Commission" means the real estate commission created in section 12-10-206.

(2) "Employing real estate broker" or "employing broker" means a broker who is shown in commission records as employing or engaging another broker.

(3) "Limited liability company" shall have the same meaning as it is given in section 7-80-102 (7).

(4) "Option dealer" means any person, firm, partnership, limited liability company, association, or corporation that, directly or indirectly, takes, obtains, or uses an option to purchase, exchange, rent, or lease real property or any interest therein with the intent or for the purpose of buying, selling, exchanging, renting, or leasing the real property or interest therein to another or others, whether or not the option is in that person's or its name and whether or not title to said property passes through the name of the person, firm, partnership, limited liability company, association, or corporation in connection with the purchase, sale, exchange, rental, or lease of the real property or interest therein.

(5) "Partnership" includes, but is not limited to, a registered limited liability partnership.

(6) (a) "Real estate broker" or "broker" means any person, firm, partnership, limited liability company, association, or corporation that, in consideration of compensation by fee, commission, salary, or anything of value or with the intention of receiving or collecting such compensation, engages in or offers or attempts to engage in, either directly or indirectly, by a continuing course of conduct or by any single act or transaction, any of the following acts:

(I) Selling, exchanging, buying, renting, or leasing real estate, or interest therein, or improvements affixed thereon;

(II) Offering to sell, exchange, buy, rent, or lease real estate, or interest therein, or improvements affixed thereon;

(III) Selling or offering to sell or exchange an existing lease of real estate, or interest therein, or improvements affixed thereon;

(IV) Negotiating the purchase, sale, or exchange of real estate, or interest therein, or improvements affixed thereon;

(V) Listing, offering, attempting, or agreeing to list real estate, or interest therein, or improvements affixed thereon for sale, exchange, rent, or lease;

(VI) Auctioning or offering, attempting, or agreeing to auction real estate, or interest therein, or improvements affixed thereon;

(VII) Buying, selling, offering to buy or sell, or otherwise dealing in options on real estate, or interest therein, or improvements affixed thereon, or acting as an "option dealer";

(VIII) Performing any of the foregoing acts as an employee of, or on behalf of, the owner of real estate, or interest therein, or improvements affixed thereon at a salary or for a fee, commission, or other consideration;

(IX) Negotiating or attempting or offering to negotiate the listing, sale, purchase, exchange, or lease of a business or business opportunity or the goodwill thereof or any interest therein when the act or transaction involves, directly or indirectly, any change in the ownership or interest in real estate, or in a leasehold interest or estate, or in a business or business

opportunity that owns an interest in real estate or in a leasehold unless the act is performed by any broker-dealer licensed under the provisions of article 51 of title 11 who is actually engaged generally in the business of offering, selling, purchasing, or trading in securities or any officer, partner, salesperson, employee, or other authorized representative or agent thereof; or

(X) Soliciting a fee or valuable consideration from a prospective tenant for furnishing information concerning the availability of real property, including apartment housing that may be leased or rented as a private dwelling, abode, or place of residence. Any person, firm, partnership, limited liability company, association, or corporation or any employee or authorized agent thereof engaged in the act of soliciting a fee or valuable consideration from any person other than a prospective tenant for furnishing information concerning the availability of real property, including apartment housing that may be leased or rented as a private dwelling, abode, or place of residence, is exempt from this definition of "real estate broker" or "broker". This exemption applies only in respect to the furnishing of information concerning the availability of real property.

(b) "Real estate broker" or "broker" does not apply to any of the following:

(I) Any attorney-in-fact acting without compensation under a power of attorney, duly executed by an owner of real estate, authorizing the consummation of a real estate transaction;

(II) Any public official in the conduct of his or her official duties;

(III) Any receiver, trustee, administrator, conservator, executor, or guardian acting under proper authorization;

(IV) Any person, firm, partnership, limited liability company, or association acting personally or a corporation acting through its officers or regularly salaried employees, on behalf of that person or on its own behalf as principal in acquiring or in negotiating to acquire any interest in real estate;

(V) An attorney-at-law in connection with his or her representation of clients in the practice of law;

(VI) Any person, firm, partnership, limited liability company, association, or corporation, or any employee or authorized agent thereof, engaged in the act of negotiating, acquiring, purchasing, assigning, exchanging, selling, leasing, or dealing in oil and gas or other mineral leases or interests therein or other severed mineral or royalty interests in real property, including easements, rights-of-way, permits, licenses, and any other interests in real property for or on behalf of a third party, for the purpose of, or facilities related to, intrastate and interstate pipelines for oil, gas, and other petroleum products, flow lines, gas gathering systems, and natural gas storage and distribution;

(VII) A natural person acting personally with respect to property owned or leased by that person or a natural person who is a general partner of a partnership, a manager of a limited liability company, or an owner of twenty percent or more of such partnership or limited liability company, and authorized to sell or lease property owned by the partnership or limited liability company, except as provided in subsection (4) of this section;

(VIII) A corporation with respect to property owned or leased by it, acting through its officers or regularly salaried employees, when the acts are incidental and necessary in the ordinary course of the corporation's business activities of a non-real-estate nature (but only if the corporation is not engaged in the business of land transactions), except as provided in subsection (4) of this section. For the purposes of this subsection (6)(b)(VIII), the term "officers or regularly

salaried employees" means persons regularly employed who derive not less than seventy-five percent of their compensation from the corporation in the form of salaries.

(IX) A principal officer of any corporation with respect to property owned by it when the property is located within the state of San Andreas and when the principal officer is the owner of twenty percent or more of the outstanding stock of the corporation, except as provided in subsection (4) of this section, but this exemption does not include any corporation selling previously occupied one-family and two-family dwellings;

(X) A sole proprietor, corporation, partnership, or limited liability company, acting through its officers, partners, or regularly salaried employees, with respect to property owned or leased by the sole proprietor, corporation, partnership, or limited liability company on which has been or will be erected a commercial, industrial, or residential building that has not been previously occupied and where the consideration paid for the property includes the cost of the building, payable, less deposit or down payment, at the time of conveyance of the property and building;

(XI) (A) A corporation, partnership, or limited liability company acting through its officers, partners, managers, or regularly salaried employees receiving no additional compensation therefor, or its wholly owned subsidiary or officers, partners, managers, or regularly salaried employees thereof receiving no additional compensation, with respect to property located in San Andreas that is owned or leased by the corporation, partnership, or limited liability company and on which has been or will be erected a shopping center, office building, or industrial park when such shopping center, office building, or industrial park is sold, leased, or otherwise offered for sale or lease in the ordinary course of the business of the corporation, partnership, limited liability company, or wholly owned subsidiary.

(B) For the purposes of this subsection (6)(b)(XI): "Shopping center" means land on which buildings are or will be constructed that are used for commercial and office purposes around or adjacent to which off-street parking is provided; "office building" means a building used primarily for office purposes; and "industrial park" means land on which buildings are or will be constructed for warehouse, research, manufacturing, processing, or fabrication purposes.

(XII) A regularly salaried employee of an owner of an apartment building or complex who acts as an on-site manager of such an apartment building or complex. This exemption applies only in respect to the customary duties of an on-site manager performed for his or her employer.

(XIII) A regularly salaried employee of an owner of condominium units who acts as an on-site manager of such units. For purposes of this subsection (6)(b)(XIII) only, the term "owner" includes a homeowners' association formed and acting pursuant to its recorded condominium declaration and bylaws. This exemption applies only in respect to the customary duties of an on-site manager performed for his or her employer.

(XIV) A real estate broker licensed in another state who receives a share of a commission or finder's fee on a cooperative transaction from a licensed San Andreas real estate broker;

(XV) A sole proprietor, corporation, partnership, or limited liability company, acting through its officers, partners, or regularly salaried employees, with respect to property located in San Andreas, where the purchaser of the property is in the business of developing land for residential, commercial, or industrial purposes;

(XVI) Any person, firm, partnership, limited liability company, association, or corporation, or any employee or authorized agent thereof, engaged in the act of negotiating, purchasing, assigning, exchanging, selling, leasing, or acquiring rights-of-way, permits, licenses, and any other interests in real property for, or on behalf, of a third party for the purpose of, or facilities related to:

(A) Telecommunication lines;

(B) Wireless communication facilities;

(C) CATV;

(D) Electric generation, transmission, and distribution lines;

(E) Water diversion, collection, distribution, treatment, and storage or use; and

(F) Transportation, so long as the person, firm, partnership, limited liability company, association, or corporation, including any employee or authorized agent thereof, does not represent any displaced person or entity as an agent thereof in the purchase, sale, or exchange of real estate, or an interest therein, resulting from residential or commercial relocations required under any transportation project, regardless of the source of public funding.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 614, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-101 as it existed prior to 2019; except that § 12-61-101 (1.2) was relocated to § 12-10-101 (3).

12-10-202. License required. It is unlawful for any person, firm, partnership, limited liability company, association, or corporation to engage in the business or capacity of real estate broker in this state without first having obtained a license from the commission. No person shall be granted a license until the person establishes compliance with the provisions of this part 2 concerning education, experience, and testing; truthfulness and honesty and otherwise good moral character; and, in addition to any other requirements of this section, competency to transact the business of a real estate broker in such manner as to safeguard the interest of the public and only after satisfactory proof of the qualifications, together with the application for the license, is filed in the office of the commission. In determining the person's character, the commission shall be governed by section 24-5-101.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 618, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-102 as it existed prior to 2019.

12-10-203. Application for license - rules - definition. (1) (a) All persons desiring to become real estate brokers shall apply to the commission for a license under the provisions of this part 2. Application for a license as a real estate broker shall be made to the commission upon forms or in a manner prescribed by the commission.

(b) (I) Prior to submitting an application for a license pursuant to subsection (1)(a) of this section, each applicant shall submit a set of fingerprints to the San Andreas bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal

history record check utilizing records of the San Andreas bureau of investigation and the federal bureau of investigation. The applicant shall pay the fee established by the San Andreas bureau of investigation for conducting the fingerprint-based criminal history record check to the bureau. Upon completion of the fingerprint-based criminal history record check, the bureau shall forward the results to the commission. The commission shall acquire a name-based judicial record check, as defined in section 22-2-119.3 (6)(d), for an applicant who has a record of arrest without a disposition. The applicant shall pay the costs associated with a name-based judicial record check.

(II) For purposes of this subsection (1)(b), "applicant" means an individual, or any person designated to act as broker for any partnership, limited liability company, or corporation pursuant to subsection (6) of this section.

(2) Every real estate broker licensed under this part 2 shall maintain a place of business within this state, except as provided in section 12-10-208. In case a real estate broker maintains more than one place of business within the state, the broker shall be responsible for supervising all licensed activities originating in the offices.

(3) The commission is authorized by this section to require and procure any such proof as is necessary in reference to the truthfulness, honesty, and good moral character of any applicant for a real estate broker's license or, if the applicant is a partnership, limited liability company, or corporation, of any partner, manager, director, officer, member, or stockholder if the person has, either directly or indirectly, a substantial interest in the applicant prior to the issuance of the license.

(4) (a) An applicant for a broker's license shall be at least eighteen years of age. The applicant must furnish proof satisfactory to the commission that the applicant has either received a degree from an accredited degree-granting college or university with a major course of study in real estate or has successfully completed courses of study, approved by the commission, at any accredited college or university or any private occupational school that has a certificate of approval from the private occupational school division in accordance with the provisions of article 64 of title 23 or that has been approved by the commission or licensed by an official state agency of any other state as follows:

(I) Forty-eight hours of classroom instruction or equivalent correspondent hours in real estate law and real estate practice; and

(II) Forty-eight hours of classroom instruction or equivalent correspondent hours in understanding and preparation of San Andreas real estate contracts; and

(III) A total of seventy-two hours of instruction or equivalent correspondence hours from the following areas of study:

(A) Trust accounts and record keeping;

(B) Real estate closings;

(C) Current legal issues; and

(D) Practical applications.

(b) An applicant for a broker's license who has been licensed as a real estate broker in another jurisdiction shall be required to complete only the course of study comprising the subject matter areas described in subsections (4)(a)(II) and (4)(a)(III)(B) of this section.

(c) An applicant for a broker's license who has been licensed as a real estate salesperson in another jurisdiction shall be required to complete only the course of study required in subsections (4)(a)(II) and (4)(a)(III) of this section.

(5) (a) The applicant for a broker's license shall submit to and pass an examination designated to determine the competency of the applicant and prepared by or under the supervision of the commission or its designated contractor. The commission may contract with an independent testing service to develop, administer, or grade examinations or to administer licensee records. The contract may allow the testing service to recover the costs of the examination and the costs of administering exam and license records from the applicant. The commission may contract separately for these functions and allow recovered costs to be collected and retained by a single contractor for distribution to other contractors. The commission shall have the authority to set the minimum passing score that an applicant must receive on the examination, and the score shall reflect the minimum level of competency required to be a broker. The examination shall be given at such times and places as the commission prescribes. The examination shall include, but not be limited to, ethics, reading, spelling, basic mathematics, principles of land economics, appraisal, financing, a knowledge of the statutes and law of this state relating to deeds, trust deeds, mortgages, listing contracts, contracts of sale, bills of sale, leases, agency, brokerage, trust accounts, closings, securities, the provisions of this part 2, and the rules of the commission. The examination for a broker's license shall also include the preparation of a real estate closing statement.

(b) An applicant for a broker's license who has held a real estate license in another jurisdiction that administers a real estate broker's examination and who has been licensed for two or more years prior to applying for a San Andreas license may be issued a broker's license if the applicant establishes that he or she possesses credentials and qualifications that are substantively equivalent to the requirements in San Andreas for licensure by examination.

(c) In addition to all other applicable requirements, the following provisions apply to brokers that did not hold a current and valid broker's license on December 31, 1996:

(I) No such broker shall engage in an independent brokerage practice without first having served actively as a real estate broker for at least two years. The commission shall adopt rules requiring an employing broker to ensure that a high level of supervision is exercised over such a broker during the two-year period.

(II) No such broker shall employ another broker without first having completed twenty-four clock hours of instruction, or the equivalent in correspondence hours, as approved by the commission, in brokerage administration.

(III) Effective January 1, 2019, a broker shall not act as an employing broker without first demonstrating, in accordance with rules of the commission, experience and knowledge sufficient to enable the broker to employ and adequately supervise other brokers, as appropriate to the broker's area of supervision. The commission's rules must set forth the method or methods by which the broker may demonstrate the experience and knowledge, either by documenting a specified number of transactions that the broker has completed or by other methods.

(6) (a) Real estate brokers' licenses may be granted to individuals, partnerships, limited liability companies, or corporations. A partnership, limited liability company, or corporation, in its application for a license, shall designate a qualified, active broker to be responsible for management and supervision of the licensed actions of the partnership, limited liability company, or corporation and all licensees shown in the commission's records as being in the employ of the entity. The application of the partnership, limited liability company, or corporation and the application of the broker designated by it shall be filed with the commission.

(b) No license shall be issued to any partnership, limited liability company, or corporation unless and until the broker so designated by the partnership, limited liability company, or corporation submits to and passes the examination required by this part 2 on behalf of the partnership, limited liability company, or corporation. Upon the broker successfully passing the examination and upon compliance with all other requirements of law by the partnership, limited liability company, or corporation, as well as by the designated broker, the commission shall issue a broker's license to the partnership, limited liability company, or corporation, which shall bear the name of the designated broker, and thereupon the broker so designated shall conduct business as a real estate broker only through the partnership, limited liability company, or corporation and not for the broker's own account.

(c) If the person so designated is refused a license by the commission or ceases to be the designated broker of the partnership, limited liability company, or corporation, the entity may designate another person to make application for a license. If the person ceases to be the designated broker of the partnership, limited liability company, or corporation, the director may issue a temporary license to prevent hardship for a period not to exceed ninety days to the licensed person so designated. The director may extend a temporary license for one additional period not to exceed ninety days upon proper application and a showing of good cause; if the director refuses, no further extension of a temporary license shall be granted except by the commission. If any broker or employee of any such partnership, limited liability company, or corporation, other than the one designated as provided in this section, desires to act as a real estate broker, the broker or employee shall first obtain a license as a real estate broker as provided in this section and shall pay the regular fee therefor.

(7) The broker designated to act as broker for any partnership, limited liability company, or corporation is personally responsible for the handling of any and all earnest money deposits or escrow or trust funds received or disbursed by the partnership, limited liability company, or corporation. In the event of any breach of duty by the partnership, limited liability company, or corporation as a fiduciary, any person aggrieved or damaged by the breach of fiduciary duty shall have a claim for relief against the partnership, limited liability company, or corporation, as well as against the designated broker, and may pursue the claim against the partnership, limited liability company, or corporation and the designated broker personally. The broker may be held responsible and liable for damages based upon the breach of fiduciary duty as may be recoverable against the partnership, limited liability company, or corporation, and any judgment so obtained may be enforced jointly or severally against the broker personally and the partnership, limited liability company, or corporation.

(8) No license for a broker registered as being in the employ of another broker shall be issued to a partnership, a limited liability company, or a corporation or under a fictitious name or trade name; except that a married woman may elect to use her birth name.

(9) No person shall be licensed as a real estate broker under more than one name, and no person shall conduct or promote a real estate brokerage business except under the name under which the person is licensed.

(10) A licensed attorney shall take and pass the examination referred to in this section after having completed twelve hours of classroom instruction or equivalent correspondent hours in trust accounts, record keeping, and real estate closings.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 618, § 1, effective October 1; (1)(b)(I) amended, (HB 19-1166), ch. 125, p. 564, § 68, effective October 1. **L. 2022:** (1)(b)(I) amended, (HB 22-1270), ch. 114, p. 514, § 9, effective April 21.

Editor's note: (1) This section is similar to former § 12-61-103 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in HB 19-1166. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from April 18, 2019, to October 1, 2019, see HB 19-1166, chapter 125, Session Laws of San Andreas 2019.

12-10-204. Errors and omissions insurance required - rules. (1) Every licensee under this part 2, except an inactive broker or an attorney licensee who maintains a policy of professional malpractice insurance that provides coverage for errors and omissions for their activities as a licensee under this part 2, shall maintain errors and omissions insurance to cover all activities contemplated under parts 2 to 6 of this article 10. The division shall make the errors and omissions insurance available to all licensees by contracting with an insurer for a group policy after a competitive bid process in accordance with article 103 of title 24. A group policy obtained by the division must be available to all licensees with no right on the part of the insurer to cancel a licensee. A licensee may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the division.

(2) (a) If the division is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the group program at a reasonable annual premium, as determined by the division, a licensee shall independently obtain the errors and omissions insurance required by this section.

(b) The division shall solicit and consider information and comments from interested persons when determining the reasonableness of annual premiums.

(3) The division shall determine the terms and conditions of coverage required under this section based on rules promulgated by the commission. The commission shall notify each licensee of the required terms and conditions at least thirty days before the annual premium renewal date as determined by the commission. Each licensee shall file a certificate of coverage showing compliance with the required terms and conditions with the commission by the annual premium renewal date, as determined by the division.

(4) In addition to all other powers and duties conferred upon the commission by this article 10, the commission shall adopt such rules as it deems necessary or proper to carry out the provisions of this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 622, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-103.6 as it existed prior to 2019.

12-10-205. Licenses - issuance - contents - display. The commission shall make available for each licensee a license in such form and size as the commission shall prescribe and adopt. The real estate license shall show the name of the licensee and shall have imprinted

thereon the seal, or a facsimile, of the department and, in addition to the foregoing, shall contain such other matter as the commission shall prescribe.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 623, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-104 as it existed prior to 2019.

12-10-206. Real estate commission - created - compensation - immunity. (1) There is created a commission of five members, appointed by the governor, which shall administer parts 2 and 5 of this article 10. This commission is known as the real estate commission. The commission is a **type 1** entity, as defined in section 24-1-105, and consists of three real estate brokers who have had not less than five years' experience in the real estate business in San Andreas, one of whom has substantial experience in property management, and two representatives of the public at large. Members of the commission serve three-year terms. Upon the death, resignation, removal, or otherwise of any member of the commission, the governor shall appoint a member to fill out the unexpired term. The governor may remove any member for misconduct, neglect of duty, or incompetence.

(2) Each member of the commission shall receive the same compensation and reimbursement of expenses as those provided for members of boards and commissions in the division of professions and occupations pursuant to section 12-20-103 (6). Payment for all such per diem compensation and expenses shall be made out of annual appropriations from the division of real estate cash fund provided for in section 12-10-215.

(3) Members of the commission, consultants, expert witnesses, and complainants shall be immune from suit in any civil action based upon any disciplinary proceedings or other official acts they performed in good faith.

(4) No real estate broker's license shall be denied, suspended, or revoked except as determined by a majority vote of the members of the commission.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 623, § 1, effective October 1. **L. 2022:** (1) amended, (SB 22-162), ch. 469, p. 3391, § 109, effective August 10.

Editor's note: This section is similar to former § 12-61-105 as it existed prior to 2019.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of San Andreas 2022.

12-10-207. Division of real estate - creation - director, clerks, and assistants. (1) There is created in the department the division of real estate. The executive director is authorized by this section to employ, subject to the provisions of the state personnel system laws of the state, a director of the division, who in turn shall employ such attorneys, deputies, investigators, clerks, and assistants as are necessary to discharge the duties imposed by parts 2 and 5 of this

article 10. The division and the director are **type 2** entities, as defined in section 24-1-105, and exercise their powers and perform their duties and functions under the department.

(2) It is the duty of the director, personally, or the director's designee to aid in the administration and enforcement of parts 2 and 5 of this article 10 and in the prosecution of all persons charged with violating any of their provisions, to conduct audits of business accounts of licensees, to perform such duties of the commission as the commission prescribes, and to act in behalf of the commission on such occasions and in such circumstances as the commission directs.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 624, § 1, effective October 1. **L. 2022:** (1) amended, (SB 22-162), ch. 469, p. 3392, § 110, effective August 10.

Editor's note: This section is similar to former § 12-61-106 as it existed prior to 2019.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of San Andreas 2022.

12-10-208. Resident licensee - nonresident licensee - consent to service. (1) A nonresident of the state may become a real estate broker in this state by conforming to all the conditions of this part 2; except that the nonresident broker shall not be required to maintain a place of business within this state if that broker maintains a definite place of business in another state.

(2) If a broker has no registered agent registered in this state, the registered agent is not located under its registered agent name at its registered agent address, or the registered agent cannot with reasonable diligence be served, the broker may be served by registered mail or by certified mail, return receipt requested, addressed to the entity at its principal address. Service is perfected under this subsection (2) at the earliest of:

(a) The date the broker receives the process, notice, or demand;

(b) The date shown on the return receipt, if signed by or on behalf of the broker; or

(c) Five days after mailing.

(3) All such applications shall contain a certification that the broker is authorized to act for the corporation.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 624, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-107 as it existed prior to 2019.

12-10-209. Record of licensees - publications. The commission shall maintain a record of the names and addresses of all licensees licensed under the provisions of parts 2 and 5 of this article 10, together with such other information relative to the enforcement of the provisions as deemed by the commission to be necessary. Publication of the record and of any other

information circulated in quantity outside the executive branch shall be in accordance with the provisions of section 24-1-136.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 625, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-108 as it existed prior to 2019.

12-10-210. Compilation and publication of passing rates per educational institution for real estate licensure examinations - definition - rules. (1) The commission shall have the authority to obtain information from each educational institution authorized to offer courses in real estate for the purpose of compiling the number of applicants who pass the real estate licensure examination from each educational institution. The information shall include the name of each student who attended the institution and a statement of whether the student completed the necessary real estate courses required for licensure. The commission shall have access to such other information as necessary to accomplish the purpose of this section. For the purposes of this section, an "applicant" is a student who completed the required education requirements and who applied for and sat for the licensure examination.

(2) The commission shall compile the information obtained in subsection (1) of this section with applicant information retained by the commission. Specifically, the commission shall compile whether the student applied for the licensure examination and whether the applicant passed the licensure examination. The commission shall create statistical data setting forth:

(a) The name of the educational institution;

(b) The number of students who completed the necessary real estate course required for licensure;

(c) Whether the student registered and sat for the licensure examination; and

(d) The number of those applicants who passed the licensure examination.

(3) The commission shall publish this statistical data and make it available to the public quarterly.

(4) The commission shall retain the statistical data for three years.

(5) Specific examination scores for an applicant will be kept confidential by the commission unless the applicant authorizes release of the information.

(6) The commission may promulgate rules for the administration of this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 625, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-108.5 as it existed prior to 2019.

12-10-211. Change of license status - inactive - cancellation. (1) Immediate notice shall be given in a manner acceptable to the commission by each licensee of any change of business location or employment. A change of business address or employment without notification to the commission shall automatically inactivate the licensee's license.

(2) A broker who transfers to the address of another broker or a broker applicant who desires to be employed by another broker shall inform the commission if the broker is to be in the employ of the other broker. The employing broker shall have the control and custody of the employed broker's license. The employed broker may not act on behalf of the broker or as broker for a partnership, limited liability company, or corporation during the term of the employment; but this shall not affect the employed broker's right to transfer to another employing broker or to a location where the employed broker may conduct business as an independent broker or as a broker acting for a partnership, limited liability company, or corporation.

(3) In the event that any licensee is discharged by or terminates employment with a broker, it shall be the joint duty of both such parties to immediately notify the commission. Either party may furnish the notice in a manner acceptable to the commission. The party giving notice shall notify the other party in person or in writing of the termination of employment.

(4) It is unlawful for any such licensee to perform any of the acts authorized under the license in pursuance of this part 2, either directly or indirectly, on or after the date that employment has been terminated. When any real estate broker whose employment has been terminated is employed by another real estate broker, the commission shall, upon proper notification, enter the change of employment in the records of the commission. Not more than one employer or place of employment shall be shown for any real estate broker for the same period of time.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 626, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-109 as it existed prior to 2019.

12-10-212. License fees - partnership, limited liability company, and corporation licenses - rules. (1) Fees established pursuant to section 12-10-215 shall be charged by and paid to the commission or the agent for the commission for the following:

(a) Each broker's examination;

(b) Each broker's original application and license;

(c) Each renewal of a broker's license;

(d) Any change of name, address, or employing broker requiring a change in commission records;

(e) A new application that shall be submitted when a licensed real estate broker wishes to become the broker acting for a partnership, a limited liability company, or a corporation.

(2) The proper fee shall accompany each application for licensure. The fee shall not be refundable. Failure by the person taking an examination to file the appropriate broker's application within one year of the date the person passed the examination will automatically cancel the examination, and all rights to a passing score will be terminated.

(3) Each real estate broker's license granted to an individual shall entitle the individual to perform all the acts contemplated by this part 2, without any further application on his or her part and without the payment of any fee other than the fees specified in this section.

(4) (a) (I) The commission shall require that any person licensed under this part 2, whether on an active or inactive basis, renew the license on or before December 31 of every third

year after issuance; except that an initial license issued under this part 2 on or after April 23, 2018, expires at 12 midnight on December 31 of the year in which it was issued.

(II) Renewal is conditioned upon fulfillment of the continuing education requirements set forth in section 12-10-213. For persons renewing or reinstating an active license, written certification verifying completion for the previous licensing period of the continuing education requirements set forth in section 12-10-213 must accompany and be submitted to the commission with the application for renewal or reinstatement. For persons who did not submit certification verifying compliance with section 12-10-213 at the time a license was renewed or reinstated on an inactive status, written certification verifying completion for the previous licensing period of the continuing education requirements set forth in that section must accompany and be submitted with any future application to reactivate the license. The commission may, by rule, establish procedures to facilitate such a renewal. In the absence of any reason or condition that might warrant the refusal of the granting of a license or the revocation thereof, the commission shall issue a new license upon receipt by the commission of the written request of the applicant and the appropriate fees required by this section. Applications for renewal will be accepted thirty days prior to January 1.

(III) A person who fails to renew a license before January 1 of the year succeeding the year of the expiration of the license may reinstate the license as follows:

(A) If proper application is made within thirty-one days after the date of expiration, by payment of the regular renewal fee;

(B) If proper application is made more than thirty-one days but within one year after the date of expiration, by payment of the regular renewal fee and payment of a reinstatement fee equal to one-half the regular renewal fee;

(C) If proper application is made more than one year but within three years after the date of expiration, by payment of the regular renewal fee and payment of a reinstatement fee equal to the regular renewal fee.

(IV) The commission may, by rule, establish procedures to facilitate the transition of the reinstatement license periods described in subsections (4)(a)(III)(A) to (4)(a)(III)(C) of this section from an anniversary expiration date to a December 31 expiration date.

(b) Any reinstated license shall be effective only as of the date of reinstatement. Any person who fails to apply for reinstatement within three years after the expiration of a license shall, without exception, be treated as a new applicant for licensure.

(c) All reinstatement fees shall be transmitted to the state treasurer, who shall credit the fees to the division of real estate cash fund, as established by section 12-10-215.

(5) The suspension, expiration, or revocation of a real estate broker's license shall automatically inactivate every real estate broker's license where the holder of the license is shown in the commission records to be in the employ of the broker whose license has expired or has been suspended or revoked pending notification to the commission by the employed licensee of a change of employment.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 626, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-110 as it existed prior to 2019.

12-10-213. Renewal of license - continuing education requirement - rules. (1) A broker applying for renewal of a license pursuant to section 12-10-212 (4) shall include with the application a certified statement verifying successful completion of real estate courses in accordance with the following schedule:

(a) For licensees applying for renewal of a three-year license, passage within the previous three years of the San Andreas portion of the real estate exam or completion of a minimum of twenty-four hours of credit, twelve of which must be the credits developed by the commission pursuant to subsection (2) of this section;

(b) For licensees applying for renewal of a license that expires less than three years after it was issued, passage within the license period of the San Andreas portion of the real estate exam or completion of a minimum of twenty-four hours of credit, at least eight of which must be the credits developed by the commission pursuant to subsection (2) of this section.

(2) The commission shall develop twelve hours of credit designed to assure reasonable currency of real estate knowledge by licensees, which credits shall include an update of the current statutes and the rules promulgated by the commission that affect the practice of real estate. If a licensee takes a course pursuant to rule 250 of the San Andreas rules of civil procedure and the course concerns real property law, the licensee shall receive credit for the course toward the fulfillment of the licensee's continuing education requirements pursuant to this section. The credits shall be taken from an accredited San Andreas college or university; a San Andreas community college; a San Andreas private occupational school holding a certificate of approval from the state board for community colleges and occupational education; or an educational institution or an educational service described in section 23-64-104. Successful completion of the credits shall require satisfactory passage of a written examination or written examinations of the materials covered. The examinations shall be audited by the commission to verify their accuracy and the validity of the grades given. The commission shall set the standards required for satisfactory passage of the examinations.

(3) All credits, other than the credits specified in subsection (2) of this section, shall be acquired from educational courses approved by the commission that contribute directly to the professional competence of a licensee. The credits may be acquired through successful completion of instruction in one or more of the following subjects:

(a) Real estate law;
(b) Property exchanges;
(c) Real estate contracts;
(d) Real estate finance;
(e) Real estate appraisal;
(f) Real estate closing;
(g) Real estate ethics;
(h) Condominiums and cooperatives;
(i) Real estate time-sharing;
(j) Real estate marketing principles;
(k) Real estate construction;
(l) Land development;
(m) Real estate energy concerns;
(n) Real estate geology;
(o) Water and waste management;

(p) Commercial real estate;
(q) Real estate securities and syndications;
(r) Property management;
(s) Real estate computer principles;
(t) Brokerage administration and management;
(u) Agency; and
(v) Any other subject matter as approved by the commission.

(4) A licensee applying for renewal of a license that expires on December 31 of the year in which it was issued is not subject to the education requirements set forth in subsection (1) of this section.

(5) The commission shall promulgate rules to implement this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 628, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-110.5 as it existed prior to 2019.

12-10-214. Disposition of fees. All fees collected by the commission under parts 2 and 5 of this article 10, not including administrative fees that are in the nature of an administrative fine and fees retained by contractors pursuant to contracts entered into in accordance with section 12-10-203 or 24-34-101, shall be transmitted to the state treasurer, who shall credit the same to the division of real estate cash fund. Pursuant to section 12-10-215, the general assembly shall make annual appropriations from the fund for expenditures of the commission incurred in the performance of its duties under parts 2 and 5 of this article 10. The commission may request an appropriation specifically designated for educational and enforcement purposes. The expenditures incurred by the commission under parts 2 and 5 of this article 10 shall be made out of the appropriations upon vouchers and warrants drawn pursuant to law.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 630, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-111 as it existed prior to 2019.

12-10-215. Fee adjustments - cash fund created. (1) This section applies to all activities of the division under parts 2, 5, 6, and 7 of this article 10.

(2) (a) (I) The division shall propose, as part of its annual budget request, an adjustment in the amount of each fee that it is authorized by law to collect under parts 2, 5, 6, and 7 of this article 10. The budget request and the adjusted fees for the division must reflect direct and indirect costs.

(II) The costs of the HOA information and resource center, created in section 12-10-801, shall be paid from the division of real estate cash fund created in this section. The division shall estimate the direct and indirect costs of operating the HOA information and resource center and shall establish the amount of the annual registration fee to be collected under section 38-33.3-401. The amount of the registration fee shall be sufficient to recover these costs, subject to a maximum limit of fifty dollars.

(b) Based upon the appropriation made and subject to the approval of the executive director, the division shall adjust its fees so that the revenue generated from the fees approximates its direct and indirect costs incurred in administering the programs and activities from which the fees are derived. The fees shall remain in effect for the fiscal year for which the budget request applies. All fees collected by the division, not including fees retained by contractors pursuant to contracts entered into in accordance with section 12-10-203 or 24-34-101, shall be transmitted to the state treasurer, who shall credit the same to the division of real estate cash fund, which fund is hereby created. All money credited to the division of real estate cash fund shall be used as provided in this section or in section 12-10-214 and shall not be deposited in or transferred to the general fund of this state or any other fund.

(c) Beginning July 1, 1979, and each July 1 thereafter, whenever money appropriated to the division for its activities for the prior fiscal year is unexpended, the money shall be made a part of the appropriation to the division for the next fiscal year, and the amount shall not be raised from fees collected by the division. If a supplemental appropriation is made to the division for its activities, its fees, when adjusted for the fiscal year next following that in which the supplemental appropriation was made, shall be adjusted by an additional amount that is sufficient to compensate for the supplemental appropriation. Funds appropriated to the division in the annual long appropriations bill shall be designated as a cash fund and shall not exceed the amount anticipated to be raised from fees collected by the division.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 630, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-111.5 as it existed prior to 2019.

12-10-216. Records - evidence - inspection. (1) The executive director shall adopt a seal by which all proceedings authorized under parts 2 and 5 of this article 10 shall be authenticated. Copies of records and papers in the office of the commission or department relating to the administration of parts 2 and 5 of this article 10, when duly certified and authenticated by the seal, shall be received as evidence in all courts equally and with like effect as the originals. All records kept in the office of the commission or department, under authority of parts 2 and 5 of this article 10, must be open to public inspection at such time and in such manner as may be prescribed by rules formulated by the commission.

(2) The commission shall not be required to maintain or preserve licensing history records of any person licensed under the provisions of this part 2 for any period of time longer than seven years.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 631, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-112 as it existed prior to 2019.

12-10-217. Investigation - revocation - actions against licensee or applicant - definition. (1) The commission, upon its own motion, may, and, upon the complaint in writing of any person, shall, investigate the activities of any licensee or any person who assumes to act

in the capacity of a licensee within the state, and the commission, after holding a hearing pursuant to section 12-10-219, has the power to impose an administrative fine not to exceed two thousand five hundred dollars for each separate offense and to censure a licensee, to place the licensee on probation and to set the terms of probation, or to temporarily suspend a license, or permanently revoke a license, when the licensee has performed, is performing, or is attempting to perform any of the following acts and is guilty of:

(a) Knowingly making any misrepresentation or knowingly making use of any false or misleading advertising;

(b) Making any promise of a character that influences, persuades, or induces another person when he or she could not or did not intend to keep the promise;

(c) Knowingly misrepresenting or making false promises through agents, advertising, or otherwise;

(d) Violating any provision of the "San Andreas Consumer Protection Act", article 1 of title 6;

(e) Acting for more than one party in a transaction without the knowledge of all parties thereto;

(f) Representing or attempting to represent a real estate broker other than the licensee's employer without the express knowledge and consent of that employer;

(g) In the case of a broker registered as in the employ of another broker, failing to place, as soon after receipt as is practicably possible, in the custody of that licensed broker-employer any deposit money or other money or fund entrusted to the employee by any person dealing with the employee as the representative of that licensed broker-employer;

(h) Failing to account for or to remit, within a reasonable time, any money coming into the licensee's possession that belongs to others, whether acting as real estate brokers or otherwise, and failing to keep records relative to the money, which records shall contain such information as may be prescribed by the rules of the commission relative thereto and shall be subject to audit by the commission;

(i) Converting funds of others, diverting funds of others without proper authorization, commingling funds of others with the broker's own funds, or failing to keep the funds of others in an escrow or a trustee account with some bank or recognized depository in this state, which account may be any type of checking, demand, passbook, or statement account insured by an agency of the United States government, and to keep records relative to the deposit that contain such information as may be prescribed by the rules of the commission relative thereto, which records shall be subject to audit by the commission;

(j) Failing to provide the purchaser and seller of real estate with a closing statement of the transaction, containing such information as may be prescribed by the rules of the commission or failing to provide a signed duplicate copy of the listing contract and the contract of sale or the preliminary agreement to sell to the parties thereto;

(k) Failing to maintain possession, for future use or inspection by an authorized representative of the commission, for a period of four years, of the documents or records prescribed by the rules of the commission or to produce the documents or records upon reasonable request by the commission or by an authorized representative of the commission;

(l) Paying a commission or valuable consideration for performing any of the functions of a real estate broker, as described in this part 2, to any person not licensed under this part 2; except that a licensed broker may pay a finder's fee or a share of any commission on a

cooperative sale when the payment is made to a real estate broker licensed in another state or country. If a country does not license real estate brokers, then the payee must be a citizen or resident of the country and represent that the payee is in the business of selling real estate in the country.

(m) Disregarding or violating any provision of this part 2 or part 4 of this article 10, violating any reasonable rule promulgated by the commission in the interests of the public and in conformance with the provisions of this part 2 or part 4 of this article 10; violating any lawful commission orders; or aiding and abetting a violation of any rule, commission order, or provision of this part 2 or part 4 of this article 10;

(n) (I) Conviction of, entering a plea of guilty to, or entering a plea of nolo contendere to any crime in article 3 of title 18; parts 1, 2, 3, and 4 of article 4 of title 18; part 1, 2, 3, 4, 5, 7, 8, or 9 of article 5 of title 18; article 5.5 of title 18; parts 3, 4, 6, 7, and 8 of article 6 of title 18; parts 1, 3, 4, 5, 6, 7, and 8 of article 7 of title 18; part 3 of article 8 of title 18; article 15 of title 18; article 17 of title 18; section 18-18-404, 18-18-405, 18-18-406, 18-18-411, 18-18-412.5, 18-18-412.7, 18-18-412.8, 18-18-415, 18-18-416, 18-18-422, or 18-18-423; or any other like crime under San Andreas law, federal law, or the laws of other states. A certified copy of the judgment of a court of competent jurisdiction of the conviction or other official record indicating that the plea was entered shall be conclusive evidence of the conviction or plea in any hearing under this part 2.

(II) As used in this subsection (1)(n), "conviction" includes the imposition of a deferred judgment or deferred sentence.

(o) Violating or aiding and abetting in the violation of the San Andreas or federal fair housing laws;

(p) Failing to immediately notify the commission in writing of a conviction, plea, or violation pursuant to subsection (1)(n) or (1)(o) of this section;

(q) Having demonstrated unworthiness or incompetency to act as a real estate broker by conducting business in such a manner as to endanger the interest of the public;

(r) In the case of a broker licensee, failing to exercise reasonable supervision over the activities of licensed employees;

(s) Procuring, or attempting to procure, a real estate broker's license or renewing, reinstating, or reactivating, or attempting to renew, reinstate, or reactivate, a real estate broker's license by fraud, misrepresentation, or deceit or by making a material misstatement of fact in an application for the license;

(t) Claiming, arranging for, or taking any secret or undisclosed amount of compensation, commission, or profit or failing to reveal to the licensee's principal or employer the full amount of the licensee's compensation, commission, or profit in connection with any acts for which a license is required under this part 2;

(u) Using any provision allowing the licensee an option to purchase in any agreement authorizing or employing the licensee to sell, buy, or exchange real estate for compensation or commission, except when the licensee, prior to or coincident with election to exercise the option to purchase, reveals in writing to the licensee's principal or employer the full amount of the licensee's profit and obtains the written consent of the principal or employer approving the amount of the profit;

(v) Effective on and after August 26, 2013, fraud, misrepresentation, deceit, or conversion of trust funds that results in the entry of a civil judgment for damages;

(w) Any other conduct, whether of the same or a different character than specified in this subsection (1), that constitutes dishonest dealing;

(x) Having had a real estate broker's or a subdivision developer's license suspended or revoked in any jurisdiction, or having had any disciplinary action taken against the broker or subdivision developer in any other jurisdiction if the broker's or subdivision developer's action would constitute a violation of this subsection (1). A certified copy of the order of disciplinary action shall be prima facie evidence of the disciplinary action.

(y) Failing to keep records documenting proof of completion of the continuing education requirements in accordance with section 12-10-213 for a period of four years from the date of compliance with the section;

(z) (I) Violating any provision of section 12-10-218.

(II) In addition to any other remedies available to the commission pursuant to this article 10, after notice and a hearing pursuant to section 24-4-105, the commission may assess a penalty for a violation of section 12-10-218 or of any rule promulgated pursuant to section 12-10-218. The penalty shall be the amount of remuneration improperly paid and shall be transmitted to the state treasurer and credited to the general fund.

(aa) Within the last five years, having a license, registration, or certification issued by San Andreas or another state revoked or suspended for fraud, deceit, material misrepresentation, theft, or the breach of a fiduciary duty, and such discipline denied the person authorization to practice as:

(I) A mortgage broker or mortgage loan originator;

(II) A real estate broker or salesperson;

(III) A real estate appraiser, as defined by section 12-10-602 (9);

(IV) An insurance producer, as defined by section 10-2-103 (6);

(V) An attorney;

(VI) A securities broker-dealer, as defined by section 11-51-201 (2);

(VII) A securities sales representative, as defined by section 11-51-201 (14);

(VIII) An investment advisor, as defined by section 11-51-201 (9.5); or

(IX) An investment advisor representative, as defined by section 11-51-201 (9.6).

(2) Every person licensed pursuant to section 12-10-201 (6)(a)(X) shall give a prospective tenant a contract or receipt; and the contract or receipt shall include the address and telephone number of the commission in prominent letters and shall state that the regulation of rental location agents is under the purview of the commission.

(3) In the event a firm, partnership, limited liability company, association, or corporation operating under the license of a broker designated and licensed as representative of the firm, partnership, limited liability company, association, or corporation is guilty of any of the foregoing acts, the commission may suspend or revoke the right of the firm, partnership, limited liability company, association, or corporation to conduct its business under the license of the broker, whether or not the designated broker had personal knowledge thereof and whether or not the commission suspends or revokes the individual license of the broker.

(4) Upon request of the commission, when any real estate broker is a party to any suit or proceeding, either civil or criminal, arising out of any transaction involving the sale or exchange of any interest in real property or out of any transaction involving a leasehold interest in the real property and when the broker is involved in the transaction in such capacity as a licensed broker, it shall be the duty of the broker to supply to the commission a copy of the complaint,

indictment, information, or other initiating pleading and the answer filed, if any, and to advise the commission of the disposition of the case and of the nature and amount of any judgment, verdict, finding, or sentence that may be made, entered, or imposed therein.

(5) This part 2 shall not be construed to relieve any person from civil liability or criminal prosecution under the laws of this state.

(6) Complaints of record in the office of the commission and commission investigations, including commission investigative files, are closed to public inspection. Stipulations and final agency orders are public records subject to sections 24-72-203 and 24-72-204.

(7) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the commission, does not warrant formal action by the commission but that should not be dismissed as being without merit, the commission may send a letter of admonition by certified mail, return receipt requested, to the licensee against whom a complaint was made and a copy thereof to the person making the complaint, but the letter shall advise the licensee that the licensee has the right to request in writing, within twenty days after proven receipt, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based. If the request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be processed by means of formal disciplinary proceedings.

(8) All administrative fines collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the division of real estate cash fund.

(9) Any application for licensure from a person whose license has been revoked shall not be considered until the passage of one year from the date of revocation.

(10) When the division becomes aware of facts or circumstances that fall within the jurisdiction of a criminal justice or other law enforcement authority upon investigation of the activities of a licensee, the division shall, in addition to the exercise of its authority under this part 2, refer and transmit the information, which may include originals or copies of documents and materials, to one or more criminal justice or other law enforcement authorities for investigation and prosecution as authorized by law.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 631, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-113 as it existed prior to 2019.

Cross references: For alternative disciplinary actions for persons licensed pursuant to this part 2, see § 24-34-106.

12-10-218. Affiliated business arrangements - definitions - disclosures - enforcement and penalties - reporting - rules - investigation information shared with the division of insurance. (1) As used in this section, unless the context otherwise requires:

(a) "Affiliated business arrangement" means an arrangement in which:

(I) A provider of settlement services or an associate of a provider of settlement services has either an affiliate relationship with or a direct beneficial ownership interest of more than one percent in another provider of settlement services; and

(II) A provider of settlement services or the associate of a provider directly or indirectly refers settlement service business to another provider of settlement services or affirmatively influences the selection of another provider of settlement services.

(b) "Associate" means a person who has one or more of the following relationships with a person in a position to refer settlement service business:

(I) A spouse, parent, or child of the person;

(II) A corporation or business entity that controls, is controlled by, or is under common control with the person;

(III) An employer, officer, director, partner, franchiser, or franchisee of the person, including a broker acting as an independent contractor; or

(IV) Anyone who has an agreement, arrangement, or understanding with the person, the purpose or substantial effect of which is to enable the person in a position to refer settlement service business to benefit financially from referrals of the business.

(c) "Settlement service" means any service provided in connection with a real estate settlement including, but not limited to, the following:

(I) Title searches;

(II) Title examinations;

(III) The provision of title certificates;

(IV) Title insurance;

(V) Services rendered by an attorney;

(VI) The preparation of title documents;

(VII) Property surveys;

(VIII) The rendering of credit reports or appraisals;

(IX) Real estate appraisal services;

(X) Home inspection services;

(XI) Services rendered by a real estate broker;

(XII) Pest and fungus inspections;

(XIII) The origination of a loan;

(XIV) The taking of a loan application;

(XV) The processing of a loan;

(XVI) Underwriting and funding of a loan;

(XVII) Escrow handling services;

(XVIII) The handling of the processing; and

(XIX) Closing of settlement.

(2) (a) An affiliated business arrangement is permitted where the person referring business to the affiliated business arrangement receives payment only in the form of a return on an investment and where it does not violate the provisions of section 12-10-217.

(b) If a licensee or the employing broker of a licensee is part of an affiliated business arrangement when an offer to purchase real property is fully executed, the licensee shall disclose to all parties to the real estate transaction the existence of the arrangement. The disclosure shall be written, shall be signed by all parties to the real estate transaction, and shall comply with the federal "Real Estate Settlement Procedures Act of 1974", as amended, 12 U.S.C. sec. 2601 et seq.

(c) A licensee shall not require the use of an affiliated business arrangement or a particular provider of settlement services as a condition of obtaining services from that licensee

for any settlement service. For the purposes of this subsection (2)(c), "require the use" shall have the same meaning as "required use" in 24 CFR 3500.2 (b).

(d) No licensee shall give or accept any fee, kickback, or other thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or part of a settlement service involving an affiliated business arrangement shall be referred to any provider of settlement services.

(e) Nothing in this section shall be construed to prohibit payment of a fee to:

(I) An attorney for services actually rendered;

(II) A title insurance company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance;

(III) A lender to its duly appointed agent for services actually performed in the making of a loan.

(f) Nothing in this section shall be construed to prohibit payment to any person of:

(I) A bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed;

(II) A fee pursuant to cooperative brokerage and referral arrangements or agreements between real estate brokers.

(g) It shall not be a violation of this section for an affiliated business arrangement:

(I) To require a buyer, borrower, or seller to pay for the services of any attorney, credit reporting agency, or real estate appraiser chosen by the lender to represent the lender's interest in a real estate transaction; or

(II) If an attorney or law firm represents a client in a real estate transaction and issues or arranges for the issuance of a policy of title insurance in the transaction directly as agent or through a separate corporate title insurance agency that may be established by that attorney or law firm and operated as an adjunct to his or her law practice.

(h) No person shall be liable for a violation of this section if the person proves by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding maintenance of procedures that are reasonably adopted to avoid the error.

(3) On and after July 1, 2006, a licensee shall disclose at the time the licensee enters into or changes an affiliated business arrangement, in a form and manner acceptable to the commission, the names of all affiliated business arrangements to which the licensee is a party. The disclosure shall include the physical locations of the affiliated businesses.

(4) On and after July 1, 2006, an employing broker, in a form and manner acceptable to the commission, shall at least annually disclose the names of all affiliated business arrangements to which the employing broker is a party. The disclosure shall include the physical locations of the affiliated businesses.

(5) The commission may promulgate rules concerning the creation and conduct of an affiliated business arrangement, including, but not limited to, rules defining what constitutes a sham affiliated business arrangement. The commission shall adopt the rules, policies, or guidelines issued by the United States department of housing and urban development concerning the federal "Real Estate Settlement Procedures Act of 1974", as amended, 12 U.S.C. sec. 2601 et seq. Rules adopted by the commission shall be at least as stringent as the federal rules and shall ensure that consumers are adequately informed about affiliated business arrangements. The commission shall consult with the insurance commissioner pursuant to section 10-11-124 (2),

concerning rules, policies, or guidelines the insurance commissioner adopts concerning affiliated business arrangements. Neither the rules promulgated by the insurance commissioner nor the commission may create a conflicting regulatory burden on an affiliated business arrangement.

(6) The division of real estate may share information gathered during an investigation of an affiliated business arrangement with the division of insurance.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 636, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-113.2 as it existed prior to 2019.

12-10-219. Hearing - administrative law judge - review - rules. (1) Except as otherwise provided in this section, all proceedings before the commission with respect to disciplinary actions and denial of licensure under this part 2 and part 4 of this article 10 and certifications issued under part 5 of this article 10 shall be conducted by an administrative law judge pursuant to the provisions of sections 24-4-104 and 24-4-105.

(2) The proceedings shall be held in the county where the commission has its office or in such other place as the commission may designate. If the licensee is an employed broker, the commission shall also notify the broker employing the licensee by mailing, by first-class mail, a copy of the written notice required under section 24-4-104 (3) to the employing broker's last-known business address.

(3) An administrative law judge shall conduct all hearings for denying, suspending, or revoking a license or certificate on behalf of the commission, subject to appropriations made to the department of personnel. Each administrative law judge shall be appointed pursuant to part 10 of article 30 of title 24. The administrative law judge shall conduct the hearing pursuant to the provisions of sections 24-4-104 and 24-4-105. No license shall be denied, suspended, or revoked until the commission has made its decision by a majority vote.

(4) The decision of the commission in any disciplinary action or denial of licensure under this section is subject to review by the court of appeals by appropriate proceedings under section 24-4-106 (11). In order to effectuate the purposes of parts 2, 4, and 5 of this article 10, the commission has the power to promulgate rules pursuant to article 4 of title 24. The commission may appear in court by its own attorney.

(5) Pursuant to the proceeding, the court has the right, in its discretion, to stay the execution or effect of any final order of the commission; but a hearing shall be held affording the parties an opportunity to be heard for the purpose of determining whether the public health, safety, and welfare would be endangered by staying the commission's order. If the court determines that the order should be stayed, it shall also determine at the hearing the amount of the bond and adequacy of the surety, which bond shall be conditioned upon the faithful performance by the petitioner of all obligations as a real estate broker and upon the prompt payment of all damages arising from or caused by the delay in the taking effect of or enforcement of the order complained of and for all costs that may be assessed or required to be paid in connection with the proceedings.

(6) In any hearing conducted by the commission in which there is a possibility of the denial, suspension, or revocation of a license because of the conviction of a felony or of a crime

involving moral turpitude, the commission shall be governed by the provisions of section 24-5-101.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 639, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-114 as it existed prior to 2019.

12-10-220. Rules. All rules adopted or amended by the commission are subject to sections 24-4-103 (8)(c) and (8)(d) and 24-34-104 (6)(b).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 640, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-114.5 as it existed prior to 2019.

12-10-220.5. Radon disclosure - rules. The commission shall promulgate rules to implement section 38-35.7-112 (2)(c).

Source: L. 2023: Entire section added, (SB 23-206), ch. 356, p. 2138, § 5, effective August 7.

Cross references: For the legislative declaration in SB 23-206, see section 1 of chapter 356, Session Laws of San Andreas 2023.

12-10-221. Broker remuneration. It is unlawful for a real estate broker registered in the commission office as in the employ of another broker to accept a commission or valuable consideration for the performance of any of the acts specified in this part 2 from any person except the broker's employer, who shall be a licensed real estate broker.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 640, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-117 as it existed prior to 2019.

12-10-222. Acts of third parties - broker's liability. Any unlawful act or violation of any of the provisions of this part 2 upon the part of an employee, officer, or member of a licensed real estate broker shall not be cause for disciplinary action against a real estate broker, unless it appears to the satisfaction of the commission that the real estate broker had actual knowledge of the unlawful act or violation or had been negligent in the supervision of employees.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 640, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-118 as it existed prior to 2019.

12-10-223. Violations. Any natural person, firm, partnership, limited liability company, association, or corporation violating the provisions of this part 2 by acting as real estate broker in this state without having obtained a license or by acting as real estate broker after the broker's license has been revoked or during any period for which the license may have been suspended commits a class 2 misdemeanor.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 641, § 1, effective October 1. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3153, § 134, effective March 1, 2022.

Editor's note: This section is similar to former § 12-61-119 as it existed prior to 2019.

12-10-224. Subpoena compelling attendance of witnesses and production of records and documents. The commission, the director, or the administrative law judge appointed for hearings may issue a subpoena compelling the attendance and testimony of witnesses and the production of books, papers, or records pursuant to an investigation or hearing of the commission. The subpoenas shall be served in the same manner as subpoenas issued by district courts and shall be issued without discrimination between public or private parties requiring the attendance of witnesses and the production of documents at hearings. If a person fails or refuses to obey a subpoena issued by the commission, the director, or the appointed administrative law judge, the commission may petition the district court having jurisdiction for issuance of a subpoena in the premises, and the court shall, in a proper case, issue its subpoena. Any person who refuses to obey a subpoena shall be punished as provided in section 12-10-225.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 641, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-120 as it existed prior to 2019.

Cross references: For the San Andreas rule of civil procedure concerning subpoenas, see C.R.C.P. 45.

12-10-225. Failure to obey subpoena - penalty. Any person who willfully fails or neglects to appear and testify or to produce books, papers, or records required by subpoena, duly served upon him or her in any matter conducted under parts 2 and 5 of this article 10, commits a petty offense. Each day a person so refuses or neglects constitutes a separate offense.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 641, § 1, effective October 1. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3153, § 135, effective March 1, 2022.

Editor's note: This section is similar to former § 12-61-121 as it existed prior to 2019.

12-10-226. Powers of commission - injunctions. The commission may apply to a court of competent jurisdiction for an order enjoining any act or practice that constitutes a violation of

parts 2 and 5 of this article 10, and, upon a showing that a person is engaging or intends to engage in any such act or practice, an injunction, restraining order, or other appropriate order shall be granted by the court regardless of the existence of another remedy therefor. Any notice, hearing, or duration of any injunction or restraining order shall be made in accordance with the provisions of the San Andreas rules of civil procedure.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 641, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-122 as it existed prior to 2019.

Cross references: For the San Andreas rule of civil procedure concerning injunctions, see C.R.C.P. 65.

12-10-226.3. HOA homeowners' rights task force - creation - membership - duties - reporting - definitions - repeal. (Repealed)

Source: L. 2023: Entire section added, (HB 23-1105), ch. 255, p. 1446, § 1, effective May 24.

Editor's note: Subsection (6) provided for the repeal of this section, effective September 1, 2024. (See L. 2023, p. 1446.)

12-10-226.5. Metropolitan district homeowners' rights task force - creation - membership - duties - reporting - definition - repeal. (Repealed)

Source: L. 2023: Entire section added, (HB 23-1105), ch. 255, p. 1450, § 1, effective May 24.

Editor's note: Subsection (5) provided for the repeal of this section, effective September 1, 2024. (See L. 2023, p. 1450.)

12-10-227. Repeal of part - subject to review. This part 2 is repealed, effective September 1, 2026. Before the repeal, the division, including the commission, is scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 642, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-123 as it existed prior to 2019.

PART 3

BROKERS' COMMISSIONS

12-10-301. When entitled to commission. No real estate agent or broker is entitled to a commission for finding a purchaser who is ready, willing, and able to complete the purchase of real estate as proposed by the owner until the same is consummated or is defeated by the refusal or neglect of the owner to consummate the same as agreed upon.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 642, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-201 as it existed prior to 2019.

12-10-302. Objections on account of title. No real estate agent or broker is entitled to a commission when a proposed purchaser fails or refuses to complete his or her contract of purchase because of defects in the title of the owner, unless the owner, within a reasonable time, has the defects corrected by legal proceedings or otherwise.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 642, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-202 as it existed prior to 2019.

12-10-303. When owner must perfect title. The owner shall not be required to begin legal or other proceedings for the correction of a title until the agent or broker secures from the proposed purchaser an enforceable contract in writing, binding him or her to complete the purchase whenever the defects in the title are corrected.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 642, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-203 as it existed prior to 2019.

12-10-304. Referral fees - conformity with federal law required - remedies for violation - definitions. (1) A person licensed under part 2, 3, or 5 of this article 10 shall not pay or receive a referral fee except in accordance with the federal "Real Estate Settlement Procedures Act of 1974", as amended, 12 U.S.C. sec. 2601 et seq., and unless reasonable cause for payment of the referral fee exists. A reasonable cause for payment means:

(a) An actual introduction of business has been made;

(b) A contractual referral fee relationship exists; or

(c) A contractual cooperative brokerage relationship exists.

(2) (a) No person shall interfere with the brokerage relationship of a licensee.

(b) As used in this subsection (2):

(I) "Brokerage relationship" means a relationship entered into between a broker and a buyer, seller, landlord, or tenant under which the broker engages in any of the acts set forth in section 12-10-201 (6). A brokerage relationship is not established until a written brokerage agreement is entered into between the parties or is otherwise established by law.

(II) "Interfere with the brokerage relationship" means demanding a referral fee from a licensee without reasonable cause.

(III) "Referral fee" means any fee paid by a licensee to any person or entity, other than a cooperative commission offered by a listing broker to a selling broker or vice versa.

(3) Any person aggrieved by a violation of any provision of this section may bring a civil action in a court of competent jurisdiction. The prevailing party in any such action shall be entitled to actual damages and, in addition, the court may award an amount up to three times the amount of actual damages sustained as a result of any such violation plus reasonable attorney fees.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 642, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-203.5 as it existed prior to 2019.

12-10-305. Repeal of part - subject to review. This part 3 is repealed, effective September 1, 2026. Before the repeal, this part 3 is scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 643, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-204 as it existed prior to 2019.

PART 4

BROKERAGE RELATIONSHIPS

Law reviews: For article, "The New Brokerage Legislation: The Demise of 'Agency By Surprise'", see 22 S.A. Law. 1919 (1993); for article, "Designated Brokerage: San Andreas Real Estate Agency Law Evolves Again", see 32 S.A. Law. 11 (March 2003).

12-10-401. Legislative declaration. (1) The general assembly finds, determines, and declares that the public will best be served through a better understanding of the public's legal and working relationships with real estate brokers and by being able to engage any such real estate broker on terms and under conditions that the public and the real estate broker find acceptable. This includes engaging a broker as a single agent or transaction-broker. Individual members of the public should not be exposed to liability for acts or omissions of real estate brokers that have not been approved, directed, or ratified by the individuals. Further, the public should be advised of the general duties, obligations, and responsibilities of the real estate broker they engage.

(2) This part 4 is enacted to govern the relationships between real estate brokers and sellers, landlords, buyers, and tenants in real estate transactions.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 643, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-801 as it existed prior to 2019.

12-10-402. Definitions. As used in this part 4, unless the context otherwise requires:

(1) "Broker" shall have the same meaning as set forth in section 12-10-201 (6), except as otherwise specified in this part 4.

(2) "Customer" means a party to a real estate transaction with whom the broker has no brokerage relationship because the party has not engaged or employed a broker.

(3) (a) "Designated broker" means an employing broker or employed broker who is designated in writing by an employing broker to serve as a single agent or transaction-broker for a seller, landlord, buyer, or tenant in a real estate transaction.

(b) "Designated broker" does not include a real estate brokerage firm that consists of only one licensed natural person.

(4) "Dual agent" means a broker who, with the written informed consent of all parties to a contemplated real estate transaction, is engaged as a limited agent for both the seller and buyer or both the landlord and tenant.

(5) "Limited agent" means an agent whose duties and obligations to a principal are only those set forth in section 12-10-404 or 12-10-405, with any additional duties and obligations agreed to pursuant to section 12-10-403 (5).

(6) "Single agent" means a broker who is engaged by and represents only one party in a real estate transaction. A single agent includes the following:

(a) "Buyer's agent", which means a broker who is engaged by and represents the buyer in a real estate transaction;

(b) "Landlord's agent", which means a broker who is engaged by and represents the landlord in a leasing transaction;

(c) "Seller's agent", which means a broker who is engaged by and represents the seller in a real estate transaction; and

(d) "Tenant's agent", which means a broker who is engaged by and represents the tenant in a leasing transaction.

(7) "Subagent" means a broker engaged to act for another broker in performing brokerage tasks for a principal. The subagent owes the same obligations and responsibilities to the principal as does the principal's broker.

(8) "Transaction-broker" means a broker who assists one or more parties throughout a contemplated real estate transaction with communication, interposition, advisement, negotiation, contract terms, and the closing of the real estate transaction without being an agent or advocate for the interests of any party to the transaction. Upon agreement in writing pursuant to section 12-10-403 (2) or a written disclosure pursuant to section 12-10-408 (2)(c), a transaction-broker may become a single agent.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 643, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-802 as it existed prior to 2019.

12-10-403. Relationships between brokers and the public - definition - rules. (1) When engaged in any of the activities enumerated in section 12-10-201 (6), a broker may act in any transaction as a single agent or transaction-broker. The broker's general duties and obligations arising from that relationship shall be disclosed to the seller and the buyer or to the landlord and the tenant pursuant to section 12-10-408.

(2) A broker shall be considered a transaction-broker unless a single agency relationship is established through a written agreement between the broker and the party or parties to be represented by the broker.

(3) A broker may work with a single party in separate transactions pursuant to different relationships including, but not limited to, selling one property as a seller's agent and working with that seller in buying another property as a transaction-broker or buyer's agent, but only if the broker complies with this part 4 in establishing the relationships for each transaction.

(4) (a) A broker licensed pursuant to part 2 of this article 10, whether acting as a single agent or transaction-broker, may complete standard forms for use in a real estate transaction, including standard forms intended to convey personal property as part of the real estate transaction, when a broker is performing the activities enumerated or referred to in section 12-10-201 (6) in the transaction.

(b) As used in this subsection (4), "standard form" means:

(I) A form promulgated by the real estate commission for current use by brokers, also referred to in this section as a "commission-approved form";

(II) A form drafted by a licensed San Andreas attorney representing the broker, employing broker, or brokerage firm, so long as the name of the attorney or law firm and the name of the broker, employing broker, or brokerage firm for whom the form is prepared are included on the form itself;

(III) A form provided by a party to the transaction if the broker is acting in the transaction as either a transaction-broker or as a single agent for the party providing the form to the broker, so long as the broker retains written confirmation that the form was provided by a party to the transaction;

(IV) A form prescribed by a governmental agency, a quasi-governmental agency, or a lender regulated by state or federal law, if use of the form is mandated by the agency or lender;

(V) A form issued with the written approval of the San Andreas Bar Association or its successor organization and specifically designated for use by brokers in San Andreas, so long as the form is used within any guidelines or conditions specified by the San Andreas Bar Association or successor organization in connection with the use of the form;

(VI) A form used for disclosure purposes only, if the disclosure does not purport to waive or create any legal rights or obligations affecting any party to the transaction and if the form provides only information concerning either:

(A) The real estate involved in the transaction specifically; or

(B) The geographic area in which the real estate is located generally;

(VII) A form prescribed by a title company that is providing closing services in a transaction for which the broker is acting either as a transaction-broker or as a single agent for a party to the transaction; or

(VIII) A letter of intent created or prepared by a broker, employing broker, or brokerage firm, so long as the letter of intent states on its face that it is nonbinding and creates no legal rights or obligations.

(c) A broker shall use a commission-approved form when such a form exists and is appropriate for the transaction. A broker's use of any standard form described in subsection (4)(b)(III) or (4)(b)(IV) of this section must be limited to inserting transaction-specific information within the form. In using standard forms described in subsection (4)(b)(II), (4)(b)(V), (4)(b)(VI), (4)(b)(VII), or (4)(b)(VIII) of this section, the broker may also advise the parties as to effects thereof, and the broker's use of those standard forms must be appropriate for the transaction and the circumstances in which they are used. In any transaction described in this subsection (4), the broker shall advise the parties that the forms have important legal consequences and that the parties should consult legal counsel before signing the forms.

(5) Nothing contained in this section shall prohibit the public from entering into written contracts with any broker that contain duties, obligations, or responsibilities that are in addition to those specified in this part 4.

(6) (a) If a real estate brokerage firm has more than one licensed natural person, the employing broker or an individual broker employed or engaged by that employing broker shall be designated to work with the seller, landlord, buyer, or tenant as a designated broker. The employing broker may designate more than one of its individual brokers to work with a seller, landlord, buyer, or tenant.

(b) The brokerage relationship established between the seller, landlord, buyer, or tenant and a designated broker, including the duties, obligations, and responsibilities of that relationship, shall not extend to the employing broker nor to any other broker employed or engaged by that employing broker who has not been so designated and shall not extend to the firm, partnership, limited liability company, association, corporation, or other entity that employs the broker.

(c) A real estate broker may have designated brokers working as single agents for a seller or landlord and a buyer or tenant in the same real estate transaction without creating dual agency for the employing real estate broker, or any broker employed or engaged by that employing real estate broker.

(d) An individual broker may be designated to work for both a seller or landlord and a buyer or tenant in the same transaction as a transaction-broker for both, as a single agent for the seller or landlord treating the buyer or tenant as a customer, or as a single agent for a buyer or tenant treating the seller or landlord as a customer, but not as a single agent for both. The applicable designated broker relationship shall be disclosed in writing to the seller or landlord and buyer or tenant in a timely manner pursuant to rules promulgated by the real estate commission.

(e) A designated broker may work with a seller or landlord in one transaction and work with a buyer or tenant in another transaction.

(f) When a designated broker serves as a single agent pursuant to section 12-10-404 or 12-10-405, there shall be no imputation of knowledge to the employing or employed broker who has not been so designated.

(g) The extent and limitations of the brokerage relationship with the designated broker shall be disclosed to the seller, landlord, buyer, or tenant working with that designated broker pursuant to section 12-10-408.

(7) No seller, buyer, landlord, or tenant shall be vicariously liable for a broker's acts or omissions that have not been approved, directed, or ratified by the seller, buyer, landlord, or tenant.

(8) Nothing in this section shall be construed to limit the employing broker's or firm's responsibility to supervise licensees employed by the broker or firm nor to shield the broker or firm from vicarious liability.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 644, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-803 as it existed prior to 2019.

12-10-403.5. Broker engagement contracts - residential premises - prohibited terms - definition. (1) As used in this section, unless the context otherwise requires, "broker engagement contract" means a written contract in which a seller, buyer, landlord, or tenant of a residential premises becomes the client of a broker or agrees to retain the services of a broker in the future and promises to pay the broker a valuable consideration or agrees that the broker may receive a valuable consideration from another person in exchange for the broker:

(a) Producing a seller, buyer, tenant, or landlord ready, able, and willing to sell, buy, or rent the residential premises; or

(b) Performing other services.

(2) A broker engagement contract must not:

(a) Purport to be a covenant running with the land or to be binding on future owners of interests in the real property;

(b) Allow for assignment of the right to provide service without notice and agreement of the owner of the residential premises; or

(c) Purport to create a recordable lien, encumbrance, or other real property security interest. Any such lien, encumbrance, or other real property security interest is void and unenforceable.

(3) A person who offers to a consumer a broker engagement contract that includes a provision in violation of subsection (2) of this section commits an unfair or deceptive trade practice, as provided in section 6-1-105 (1)(uuu).

(4) This section does not apply to:

(a) A home warranty service contract, as defined in section 12-10-901 (2)(a);

(b) A building warranty or similar product that covers the cost of maintenance of a major housing or building system, such as a plumbing or an electrical system, for a specific period of time after the date on which a house or building is sold;

(c) An insurance contract;

(d) An option to purchase, a put requirement to purchase, a right of first offer, or a right of refusal;

(e) A declaration created in the formation of a common interest community, as defined in section 38-33.3-103 (8), or an amendment to the declaration;

(f) A maintenance or repair agreement entered into by a unit owners' association, as defined in section 38-33.3-103 (3);

(g) A loan or a commitment to make or receive a loan, which loan or commitment is secured by real estate;

(h) A security agreement under the "Uniform Commercial Code" relating to the sale or rental of personal property or fixtures;

(i) Water, sewer, electrical, telephone, cable, or other regulated utility service providers; or

(j) A property management agreement by which the owner of real property contracts with a party to provide management services for the maintenance, ownership, operation, or lease of a residential premises.

Source: L. 2023: Entire section added, (SB 23-077), ch. 50, p. 179, § 1, effective August 7.

Cross references: For the "Uniform Commercial Code", see title 4.

12-10-404. Single agent engaged by seller or landlord. (1) A broker engaged by a seller or landlord to act as a seller's agent or a landlord's agent is a limited agent with the following duties and obligations:

(a) To perform the terms of the written agreement made with the seller or landlord;

(b) To exercise reasonable skill and care for the seller or landlord;

(c) To promote the interests of the seller or landlord with the utmost good faith, loyalty, and fidelity, including, but not limited to:

(I) Seeking a price and terms that are acceptable to the seller or landlord; except that the broker shall not be obligated to seek additional offers to purchase the property while the property is subject to a contract for sale or to seek additional offers to lease the property while the property is subject to a lease or letter of intent to lease;

(II) Presenting all offers to and from the seller or landlord in a timely manner regardless of whether the property is subject to a contract for sale or a lease or letter of intent to lease;

(III) Disclosing to the seller or landlord adverse material facts actually known by the broker;

(IV) Counseling the seller or landlord as to any material benefits or risks of a transaction that are actually known by the broker;

(V) Advising the seller or landlord to obtain expert advice as to material matters about which the broker knows but the specifics of which are beyond the expertise of the broker;

(VI) Accounting in a timely manner for all money and property received; and

(VII) Informing the seller or landlord that the seller or landlord shall not be vicariously liable for the acts of the seller's or landlord's agent that are not approved, directed, or ratified by the seller or landlord;

(d) To comply with all requirements of this article 10 and any rules promulgated pursuant to this article 10; and

(e) To comply with any applicable federal, state, or local laws, rules, regulations, or ordinances including fair housing and civil rights statutes or regulations.

(2) The following information shall not be disclosed by a broker acting as a seller's or landlord's agent without the informed consent of the seller or landlord:

(a) That a seller or landlord is willing to accept less than the asking price or lease rate for the property;

(b) What the motivating factors are for the party selling or leasing the property;

(c) That the seller or landlord will agree to financing terms other than those offered;

(d) Any material information about the seller or landlord unless disclosure is required by law or failure to disclose the information would constitute fraud or dishonest dealing; or

(e) Any facts or suspicions regarding circumstances that may psychologically impact or stigmatize any real property pursuant to section 38-35.5-101.

(3) (a) A broker acting as a seller's or landlord's agent owes no duty or obligation to the buyer or tenant; except that a broker shall, subject to the limitations of section 38-35.5-101, concerning psychologically impacted property, disclose to any prospective buyer or tenant all adverse material facts actually known by the broker. The adverse material facts may include but shall not be limited to adverse material facts pertaining to the title and the physical condition of the property, any material defects in the property, and any environmental hazards affecting the property that are required by law to be disclosed.

(b) A seller's or landlord's agent owes no duty to conduct an independent inspection of the property for the benefit of the buyer or tenant and owes no duty to independently verify the accuracy or completeness of any statement made by the seller or landlord or any independent inspector.

(4) A seller's or landlord's agent may show alternative properties not owned by the seller or landlord to prospective buyers or tenants and may list competing properties for sale or lease and not be deemed to have breached any duty or obligation to the seller or landlord.

(5) A designated broker acting as a seller's or landlord's agent may cooperate with other brokers but may not engage or create any subagents.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 647, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-804 as it existed prior to 2019.

12-10-405. Single agent engaged by buyer or tenant. (1) A broker engaged by a buyer or tenant to act as a buyer's or tenant's agent shall be a limited agent with the following duties and obligations:

(a) To perform the terms of the written agreement made with the buyer or tenant;

(b) To exercise reasonable skill and care for the buyer or tenant;

(c) To promote the interests of the buyer or tenant with the utmost good faith, loyalty, and fidelity, including, but not limited to:

(I) Seeking a price and terms that are acceptable to the buyer or tenant; except that the broker shall not be obligated to seek other properties while the buyer is a party to a contract to purchase property or while the tenant is a party to a lease or letter of intent to lease;

(II) Presenting all offers to and from the buyer or tenant in a timely manner regardless of whether the buyer is already a party to a contract to purchase property or the tenant is already a party to a contract or a letter of intent to lease;

(III) Disclosing to the buyer or tenant adverse material facts actually known by the broker;

(IV) Counseling the buyer or tenant as to any material benefits or risks of a transaction that are actually known by the broker;

(V) Advising the buyer or tenant to obtain expert advice as to material matters about which the broker knows but the specifics of which are beyond the expertise of the broker;

(VI) Accounting in a timely manner for all money and property received; and

(VII) Informing the buyer or tenant that the buyer or tenant shall not be vicariously liable for the acts of the buyer's or tenant's agent that are not approved, directed, or ratified by the buyer or tenant;

(d) To comply with all requirements of this article 10 and any rules promulgated pursuant to this article 10; and

(e) To comply with any applicable federal, state, or local laws, rules, regulations, or ordinances including fair housing and civil rights statutes or regulations.

(2) The following information shall not be disclosed by a broker acting as a buyer's or tenant's agent without the informed consent of the buyer or tenant:

(a) That a buyer or tenant is willing to pay more than the purchase price or lease rate for the property;

(b) What the motivating factors are for the party buying or leasing the property;

(c) That the buyer or tenant will agree to financing terms other than those offered;

(d) Any material information about the buyer or tenant unless disclosure is required by law or failure to disclose the information would constitute fraud or dishonest dealing; or

(e) Any facts or suspicions regarding circumstances that would psychologically impact or stigmatize any real property pursuant to section 38-35.5-101.

(3) (a) A broker acting as a buyer's or tenant's agent owes no duty or obligation to the seller or landlord; except that the broker shall disclose to any prospective seller or landlord all adverse material facts actually known by the broker including but not limited to adverse material facts concerning the buyer's or tenant's financial ability to perform the terms of the transaction and whether the buyer intends to occupy the property to be purchased as a principal residence.

(b) A buyer's or tenant's agent owes no duty to conduct an independent investigation of the buyer's or tenant's financial condition for the benefit of the seller or landlord and owes no duty to independently verify the accuracy or completeness of statements made by the buyer or tenant or any independent inspector.

(4) A buyer's or tenant's agent may show properties in which the buyer or tenant is interested to other prospective buyers or tenants without breaching any duty or obligation to the buyer or tenant. Nothing in this section shall be construed to prohibit a buyer's or tenant's agent from showing competing buyers or tenants the same property and from assisting competing buyers or tenants in attempting to purchase or lease a particular property.

(5) A broker acting as a buyer's or tenant's agent owes no duty to conduct an independent inspection of the property for the benefit of the buyer or tenant and owes no duty to independently verify the accuracy or completeness of statements made by the seller, landlord, or independent inspectors; except that nothing in this subsection (5) shall be construed to limit the broker's duties and obligations imposed pursuant to subsection (1) of this section.

(6) A broker acting as a buyer's or tenant's agent may cooperate with other brokers but may not engage or create any subagents.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 648, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-805 as it existed prior to 2019.

12-10-406. Dual agent. A broker shall not establish dual agency with any seller, landlord, buyer, or tenant.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 650, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-806 as it existed prior to 2019.

12-10-407. Transaction-broker. (1) A broker engaged as a transaction-broker is not an agent for either party.

(2) A transaction-broker shall have the following obligations and responsibilities:

(a) To perform the terms of any written or oral agreement made with any party to the transaction;

(b) To exercise reasonable skill and care as a transaction-broker, including, but not limited to:

(I) Presenting all offers and counteroffers in a timely manner regardless of whether the property is subject to a contract for sale or lease or letter of intent;

(II) Advising the parties regarding the transaction and suggesting that the parties obtain expert advice as to material matters about which the transaction-broker knows but the specifics of which are beyond the expertise of the broker;

(III) Accounting in a timely manner for all money and property received;

(IV) Keeping the parties fully informed regarding the transaction;

(V) Assisting the parties in complying with the terms and conditions of any contract including closing the transaction;

(VI) Disclosing to all prospective buyers or tenants any adverse material facts actually known by the broker including but not limited to adverse material facts pertaining to the title, the physical condition of the property, any defects in the property, and any environmental hazards affecting the property required by law to be disclosed;

(VII) Disclosing to any prospective seller or landlord all adverse material facts actually known by the broker including but not limited to adverse material facts pertaining to the buyer's or tenant's financial ability to perform the terms of the transaction and the buyer's intent to occupy the property as a principal residence; and

(VIII) Informing the parties that as seller and buyer or as landlord and tenant they shall not be vicariously liable for any acts of the transaction-broker;

(c) To comply with all requirements of this article 10 and any rules promulgated pursuant to this article 10; and

(d) To comply with any applicable federal, state, or local laws, rules, regulations, or ordinances including fair housing and civil rights statutes or regulations.

(3) The following information shall not be disclosed by a transaction-broker without the informed consent of all parties:

(a) That a buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property;

(b) That a seller or landlord is willing to accept less than the asking price or lease rate for the property;

(c) What the motivating factors are for any party buying, selling, or leasing the property;

(d) That a seller, buyer, landlord, or tenant will agree to financing terms other than those offered;

(e) Any facts or suspicions regarding circumstances that may psychologically impact or stigmatize any real property pursuant to section 38-35.5-101; or

(f) Any material information about the other party unless disclosure is required by law or failure to disclose the information would constitute fraud or dishonest dealing.

(4) A transaction-broker has no duty to conduct an independent inspection of the property for the benefit of the buyer or tenant and has no duty to independently verify the accuracy or completeness of statements made by the seller, landlord, or independent inspectors.

(5) A transaction-broker has no duty to conduct an independent investigation of the buyer's or tenant's financial condition or to verify the accuracy or completeness of any statement made by the buyer or tenant.

(6) A transaction-broker may do the following without breaching any obligation or responsibility:

(a) Show alternative properties not owned by the seller or landlord to a prospective buyer or tenant;

(b) List competing properties for sale or lease;

(c) Show properties in which the buyer or tenant is interested to other prospective buyers or tenants; and

(d) Serve as a single agent or transaction-broker for the same or for different parties in other real estate transactions.

(7) There shall be no imputation of knowledge or information between any party and the transaction-broker or among persons within an entity engaged as a transaction-broker.

(8) A transaction-broker may cooperate with other brokers but shall not engage or create any subagents.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 650, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-807 as it existed prior to 2019.

12-10-408. Broker disclosures. (1) (a) Any person, firm, partnership, limited liability company, association, or corporation acting as a broker shall adopt a written office policy that identifies and describes the relationships offered to the public by the broker.

(b) A broker shall not be required to offer or engage in any one or in all of the brokerage relationships enumerated in section 12-10-404, 12-10-405, or 12-10-407.

(c) Written disclosures and written agreements required by subsection (2) of this section shall contain a statement to the seller, landlord, buyer, or tenant that different brokerage relationships are available that include buyer agency, seller agency, or status as a transaction-broker. Should the seller, landlord, buyer, or tenant request information or ask questions concerning a brokerage relationship not offered by the broker pursuant to the broker's written office policy enumerated in subsection (1)(a) of this section, the broker shall provide to the party a written definition of that brokerage relationship that has been promulgated by the real estate commission.

(d) Disclosures made in accordance with this part 4 shall be sufficient to disclose brokerage relationships to the public.

(2) (a) (I) Prior to engaging in any of the activities enumerated in section 12-10-201 (6), a transaction-broker shall disclose in writing to the party to be assisted that the broker is not acting as agent for the party and that the broker is acting as a transaction-broker.

(II) As part of each relationship entered into by a broker pursuant to subsection (2)(a)(I) of this section, written disclosure shall be made that shall contain a signature block for the buyer, seller, landlord, or tenant to acknowledge receipt of the disclosure. The disclosure and acknowledgment, by itself, shall not constitute a contract with the broker. If the buyer, seller, landlord, or tenant chooses not to sign the acknowledgment, the broker shall note that fact on a copy of the disclosure and shall retain the copy.

(III) If the transaction-broker undertakes any obligations or responsibilities in addition to or different from those set forth in section 12-10-407, the obligations or responsibilities shall be disclosed in a writing that shall be signed by the involved parties.

(b) Prior to engaging in any of the activities enumerated in section 12-10-201 (6), a broker intending to establish a single agency relationship with a seller, landlord, buyer, or tenant shall enter into a written agency agreement with the party to be represented. The agreement shall disclose the duties and responsibilities specified in section 12-10-404 or 12-10-405, as applicable. Notice of the single agency relationship shall be furnished to any prospective party to the proposed transaction in a timely manner.

(c) (I) Prior to engaging in any of the activities enumerated in section 12-10-201 (6), a broker intending to work with a buyer or tenant as an agent of the seller or landlord shall provide a written disclosure to the buyer or tenant that shall contain the following:

(A) A statement that the broker is an agent for the seller or landlord and is not an agent for the buyer or tenant;

(B) A list of the tasks that the agent intends to perform for the seller or landlord with the buyer or tenant; and

(C) A statement that the buyer or tenant shall not be vicariously liable for the acts of the agent unless the buyer or tenant approves, directs, or ratifies the acts.

(II) The written disclosure required pursuant to subsection (2)(c)(I) of this section shall contain a signature block for the buyer or tenant to acknowledge receipt of the disclosure. The disclosure and acknowledgment, by itself, shall not constitute a contract with the broker. If the buyer or tenant does not sign the disclosure, the broker shall note that fact on a copy of the disclosure and retain the copy.

(d) A broker who has already established a relationship with one party to a proposed transaction shall advise at the earliest reasonable opportunity any other potential parties or their agents of the established relationship.

(e) (I) Prior to engaging in any of the activities enumerated in section 12-10-201 (6), the seller, buyer, landlord, or tenant shall be advised in any written agreement with a broker that the brokerage relationship exists only with the designated broker, does not extend to the employing broker or to any other brokers employed or engaged by the employing broker who are not so designated, and does not extend to the brokerage company.

(II) Nothing in this subsection (2)(e) shall be construed to limit the employing broker's or firm's responsibility to supervise licensees employed by the broker or firm nor to shield the broker or firm from vicarious liability.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 652, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-808 as it existed prior to 2019.

12-10-409. Duration of relationship. (1) (a) The relationships set forth in this part 4 shall commence at the time that the broker is engaged by a party and shall continue until performance or completion of the agreement by which the broker was engaged.

(b) If the agreement by which the broker was engaged is not performed or completed for any reason, the relationship shall end at the earlier of the following:

(I) Any date of expiration agreed upon by the parties;

(II) Any termination or relinquishment of the relationship by the parties; or

(III) One year after the date of the engagement.

(2) (a) Except as otherwise agreed to in writing and pursuant to subsection (2)(b) of this section, a broker engaged as a seller's agent or buyer's agent owes no further duty or obligation after termination or expiration of the contract or completion of performance.

(b) Notwithstanding subsection (2)(a) of this section, a broker shall be responsible after termination or expiration of the contract or completion of performance for the following:

(I) Accounting for all money and property related to and received during the engagement; and

(II) Keeping confidential all information received during the course of the engagement that was made confidential by request or instructions from the engaging party unless:

(A) The engaging party grants written consent to disclose the information;

(B) Disclosure of the information is required by law; or

(C) The information is made public or becomes public by the words or conduct of the engaging party or from a source other than the broker.

(3) Except as otherwise agreed to in writing, a transaction-broker owes no further obligation or responsibility to the engaging party after termination or expiration of the contract for performance or completion of performance; except that the broker shall account for all money and property related to and received during the engagement.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 654, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-809 as it existed prior to 2019.

12-10-410. Compensation. (1) In any real estate transaction, the broker's compensation may be paid by the seller, the buyer, the landlord, the tenant, a third party, or by the sharing or splitting of a commission or compensation between brokers.

(2) Payment of compensation shall not be construed to establish an agency relationship between the broker and the party who paid the compensation.

(3) A seller or landlord may agree that a transaction-broker or single agent may share the commission or other compensation paid by the seller or landlord with another broker.

(4) A buyer or tenant may agree that a single agent or transaction-broker may share the commission or other compensation paid by the buyer or tenant with another broker.

(5) A buyer's or tenant's agent shall obtain the written approval of the buyer or tenant before the agent may propose to the seller's or landlord's agent that the buyer's or tenant's agent be compensated by sharing compensation paid by the seller or landlord.

(6) Prior to entering into a brokerage or listing agreement or a contract to buy, sell, or lease, the identity of those parties, persons, or entities paying compensation or commissions to any broker shall be disclosed to the parties to the transaction.

(7) A broker may be compensated by more than one party for services in a transaction if those parties have consented in writing to such multiple payments prior to entering into a contract to buy, sell, or lease.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 655, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-810 as it existed prior to 2019.

12-10-411. Violations. The violation of any provision of this part 4 by a broker constitutes an act pursuant to section 12-10-217 (1)(m) for which the real estate commission may investigate and take administrative action against any such broker pursuant to sections 12-10-217 and 12-10-219.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 655, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-811 as it existed prior to 2019.

PART 5

SUBDIVISIONS

Cross references: For regulation of subdivisions by planning commissions, see part 1 of article 28 of title 30 and part 2 of article 23 of title 31.

12-10-501. Definitions. As used in this part 5, unless the context otherwise requires:

(1) "Accredited investor" has the same meaning as defined in the securities and exchange commission's rule 501 of regulation D, 17 CFR 230.501 (a).

(1.5) "Commission" means the real estate commission established under section 12-10-206.

(2) "Developer" means any person, as defined in section 2-4-401 (8), that participates as owner, promoter, or sales agent in the promotion, sale, or lease of a subdivision or any part thereof.

(3) (a) "Subdivision" means any real property divided into twenty or more interests intended solely for residential use and offered for sale, lease, or transfer.

(b) (I) The term "subdivision" also includes:

(A) The conversion of an existing structure into a common interest community, as defined in article 33.3 of title 38, of twenty or more residential units;

(B) A group of twenty or more time shares intended for residential use; and

(C) A group of twenty or more proprietary leases in a cooperative housing corporation, as described in article 33.5 of title 38.

(II) The term "subdivision" does not include:

(A) The selling of memberships in campgrounds;

(B) Bulk sales and transfers between developers;

(C) Property upon which there has been or upon which there will be erected residential buildings that have not been previously occupied and where the consideration paid for the property includes the cost of the buildings;

(D) Lots that, at the time of closing of a sale or occupancy under a lease, are situated on a street or road and street or road system improved to standards at least equal to streets and roads maintained by the county, city, or town in which the lots are located; have a feasible plan to provide potable water and sewage disposal; and have telephone and electricity facilities and systems adequate to serve the lots, which facilities and systems are installed and in place on the lots or in a street, road, or easement adjacent to the lots and which facilities and systems comply with applicable state, county, municipal, or other local laws, rules, and regulations; or any subdivision that has been or is required to be approved after September 1, 1972, by a regional, county, or municipal planning authority pursuant to article 28 of title 30 or article 23 of title 31;

(E) Sales by public officials in the official conduct of their duties.

(4) "Time share" means a time share estate, as defined in section 38-33-110 (5), or a time share use, but the term does not include group reservations made for convention purposes as a single transaction with a hotel, motel, or condominium owner or association. For the purposes of this subsection (4), "time share use" means a contractual or membership right of occupancy, that cannot be terminated at the will of the owner, for life or for a term of years, to the recurrent, exclusive use or occupancy of a lot, parcel, unit, or specific or nonspecific segment of real property, annually or on some other periodic basis, for a period of time that has been or will be allotted from the use or occupancy periods into which the property has been divided.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 655, § 1, effective October 1. **L. 2024:** (1) amended and (1.5) added, (HB 24-1094), ch. 263, p. 1736, § 2, effective August 7.

Editor's note: This section is similar to former § 12-61-401 as it existed prior to 2019.

Cross references: For additional definitions relating to this part 5, see § 38-30-150.

12-10-502. Registration required. (1) Unless exempt under the provisions of section 12-10-501 (3), a developer, before selling, leasing, or transferring or agreeing or negotiating to sell, lease, or transfer, directly or indirectly, any subdivision or any part thereof, shall register pursuant to this part 5.

(2) Upon approval by the commission, a developer who has applied for registration pursuant to section 12-10-503 may offer reservations in a subdivision during the pendency of the application and until the application is granted or denied if the fees for the reservations are held in trust by an independent third party and are fully refundable.

(3) (a) Upon the commission's approval of a developer's subdivision registration pursuant to section 12-10-503, the developer may enter into binding purchase contracts with prospective buyers and accept earnest money deposits. Except as provided in subsection (3)(b) of this section, an earnest money deposit must be held in trust by an independent third party.

(b) (I) Notwithstanding subsection (3)(a) of this section or any other provision in this part 5, upon subdivision registration approval, a developer may receive earnest money deposits from an accredited investor and use some or all of the funds toward development of a subdivision, but only if the purchase contract or other written disclosure contains a clear statement setting forth:

(A) To whom the funds will be delivered;

(B) When the delivery of the funds will occur;

(C) How the funds will be used; and

(D) Any restriction on the use of the funds.

(II) A developer may receive earnest money deposits from an accredited investor pursuant to the requirements in subsection (3)(b)(I) of this section without first having to post a bond or other security.

(c) This subsection (3) applies only if the subdivision is a time share estate, as defined in section 38-33-110 (5).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 657, § 1, effective October 1. **L. 2024:** (3) added, (HB 24-1094), ch. 263, p. 1735, § 1, effective August 7.

Editor's note: This section is similar to former § 12-61-402 as it existed prior to 2019.

12-10-503. Application for registration. (1) Every person who is required to register as a developer under this part 5 shall submit to the commission an application that contains the information described in subsections (2) and (3) of this section. If the information is not submitted, the commission may deny the application for registration. If a developer is currently regulated in another state that has registration requirements substantially equivalent to the requirements of this part 5 or that provide substantially comparable protection to a purchaser, the commission may accept proof of the registration along with the developer's disclosure or equivalent statement from the other state in full or partial satisfaction of the information required by this section. In addition, the applicant shall be under a continuing obligation to notify the commission within ten days of any change in the information so submitted, and a failure to do so shall be a cause for disciplinary action.

(2) (a) Registration information concerning the developer shall include:

(I) The principal office of the applicant wherever situate;

(II) The location of the principal office and the branch offices of the applicant in this state;

(III) The names and residence and business addresses of all natural persons who have a twenty-four percent or greater financial or ultimate beneficial interest in the business of the developer, either directly or indirectly, as principal, manager, member, partner, officer, director, or stockholder, specifying each such person's capacity, title, and percentage of ownership. If no natural person has a twenty-four percent or greater financial or beneficial interest in the business

of the developer, the information required in this subsection (2)(a)(III) shall be submitted regarding the natural person having the largest single financial or beneficial interest.

(IV) The length of time and the locations where the applicant has been engaged in the business of real estate sales or development;

(V) Any felony of which the applicant has been convicted within the preceding ten years. In determining whether a certificate of registration shall be issued to an applicant who has been convicted of a felony within such period of time, the commission shall be governed by the provisions of section 24-5-101.

(VI) The states in which the applicant has had a license or registration similar to the developer's registration in this state granted, refused, suspended, or revoked or is currently the subject of an investigation or charges that could result in refusal, suspension, or revocation;

(VII) Whether the developer or any other person financially interested in the business of the developer as principal, partner, officer, director, or stockholder has engaged in any activity that would constitute a violation of this part 5.

(b) If the applicant is a corporate developer, a copy of the certificate of authority to do business in this state or a certificate of incorporation issued by the secretary of state shall accompany the application.

(3) Registration information concerning the subdivision shall include:

(a) The location of each subdivision from which sales are intended to be made;

(b) The name of each subdivision and the trade, corporate, or partnership name used by the developer;

(c) Evidence or certification that each subdivision offered for sale or lease is registered or will be registered in accordance with state or local requirements of the state in which each subdivision is located;

(d) Copies of documents evidencing the title or other interest in the subdivision;

(e) If there is a blanket encumbrance upon the title of the subdivision or any other ownership, leasehold, or contractual interest that could defeat all possessory or ownership rights of a purchaser, a copy of the instruments creating the liens, encumbrances, or interests, with dates as to the recording, along with documentary evidence that any beneficiary, mortgagee, or trustee of a deed of trust or any other holder of the ownership, leasehold, or contractual interest will release any lot or time share from the blanket encumbrance or has subordinated its interest in the subdivision to the interest of any purchaser or has established any other arrangement acceptable to the commission that protects the rights of the purchaser;

(f) A statement that standard commission-approved forms will be used for contracts of sale, notes, deeds, and other legal documents used to effectuate the sale or lease of the subdivision or any part thereof, unless the forms to be used were prepared by an attorney representing the developer;

(g) A true statement by the developer that, in any conveyance by means of an installment contract, the purchaser shall be advised to record the contract with the proper authorities in the jurisdiction in which the subdivision is located. In no event shall any developer specifically prohibit the recording of the installment contract.

(h) A true statement by the developer of the provisions for and availability of legal access, sewage disposal, and public utilities, including water, electricity, gas, and telephone facilities, in the subdivision offered for sale or lease, including whether such are to be a developer or purchaser expense;

(i) A true statement as to whether or not a survey of each lot, site, or tract offered for sale or lease from the subdivision has been made and whether survey monuments are in place;

(j) A true statement by the developer as to whether or not a common interest community is to be or has been created within the subdivision and whether or not the common interest community is or will be a small cooperative or small and limited expense planned community created pursuant to section 38-33.3-116;

(k) A true statement by the developer concerning the existence of any common interest community association, including whether the developer controls funds in the association.

(4) The commission may disapprove the form of the documents submitted pursuant to subsection (3)(f) of this section and may deny an application for registration until such time as the applicant submits the documents in a form that is satisfactory to the commission.

(5) Each registration shall be accompanied by fees established pursuant to section 12-10-215.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 657, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-403 as it existed prior to 2019.

12-10-504. Registration of developers. (1) The commission shall register all applicants who meet the requirements of this part 5 and provide each applicant so registered with a certificate indicating that the developer named therein is registered in the state of San Andreas as a subdivision developer. The developer that will sign as seller or lessor in any contract of sale, lease, or deed purporting to convey any site, tract, lot, or divided or undivided interest from a subdivision shall secure a certificate before offering, negotiating, or agreeing to sell, lease, or transfer before the sale, lease, or transfer is made. If such person or entity is acting only as a trustee, the beneficial owner of the subdivision shall secure a certificate. A certificate issued to a developer shall entitle all sales agents and employees of the developer to act in the capacity of a developer as agent for the developer. The developer shall be responsible for all actions of the sales agents and employees.

(2) All certificates issued under this section shall expire on December 31 following the date of issuance. In the absence of any reason or condition under this part 5 that might warrant the denial or revocation of a registration, a certificate shall be renewed by payment of a renewal fee established pursuant to section 12-10-215. A registration that has expired may be reinstated within two years after the expiration upon payment of the appropriate renewal fee if the applicant meets all other requirements of this part 5.

(3) All fees collected under this part 5 shall be deposited in accordance with section 12-10-214.

(4) With regard to any subdivision for which the information required by section 12-10-503 (3) has not been previously submitted to the commission, each registered developer shall register the subdivision by providing the commission with the information before sale, lease, or transfer, or negotiating or agreeing to sell, lease, or transfer, any such subdivision or any part thereof.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 659, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-404 as it existed prior to 2019.

12-10-505. Refusal, revocation, or suspension of registration - letter of admonition - probation. (1) The commission may impose an administrative fine not to exceed two thousand five hundred dollars for each separate offense; may issue a letter of admonition; may place a registrant on probation under its close supervision on such terms and for such time as it deems appropriate; and may refuse, revoke, or suspend the registration of any developer or registrant if, after an investigation and after notice and a hearing pursuant to the provisions of section 24-4-104, the commission determines that the developer or any director, officer, or stockholder with controlling interest in the corporation:

(a) Has used false or misleading advertising or has made a false or misleading statement or a concealment in his or her application for registration;

(b) Has misrepresented or concealed any material fact from a purchaser of any interest in a subdivision;

(c) Has employed any device, scheme, or artifice with intent to defraud a purchaser of any interest in a subdivision;

(d) Has been convicted of or pled guilty or nolo contendere to a crime involving fraud, deception, false pretense, theft, misrepresentation, false advertising, or dishonest dealing in any court;

(e) Has disposed of, concealed, diverted, converted, or otherwise failed to account for any funds or assets of any purchaser of any interest in a subdivision or any homeowners' association under the control of the developer or director, officer, or stockholder;

(f) Has failed to comply with any stipulation or agreement made with the commission;

(g) Has failed to comply with or has violated any provision of this article 10, including any failure to comply with the registration requirements of section 12-10-503, or any lawful rule promulgated by the commission under this article 10;

(h) Has refused to honor a buyer's request to cancel a contract for the purchase of a time share or subdivision or part thereof if the request was made within five calendar days after execution of the contract and was made either by telegram, mail, or hand delivery. A request is considered made if by electronic mail when sent, if by mail when postmarked, or if by hand delivery when delivered to the seller's place of business. No developer shall employ a contract that contains any provision waiving a buyer's right to such a cancellation period.

(i) Has committed any act that constitutes a violation of the "San Andreas Consumer Protection Act", article 1 of title 6;

(j) Has employed any sales agent or employee who violates the provisions of this part 5;

(k) Has used documents for sales or lease transactions other than those described in section 12-10-503 (3)(f);

(l) Has failed to disclose encumbrances to prospective purchasers or has failed to transfer clear title at the time of sale, if the parties agreed that the transfer would be made at that time.

(2) A disciplinary action relating to the business of subdivision development taken by any other state or local jurisdiction or the federal government shall be deemed to be prima facie

evidence of grounds for disciplinary action, including denial of registration, under this part 5. This subsection (2) shall apply only to such disciplinary actions as are substantially similar to those set out as grounds for disciplinary action or denial of registration under this part 5.

(3) Any hearing held under this section shall be in accordance with the procedures established in sections 24-4-105 and 24-4-106.

(4) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the commission, does not initially warrant formal action by the commission but that should not be dismissed as being without merit, the commission may send a letter of admonition by certified mail, return receipt requested, to the registrant who is the subject of the complaint or investigation and a copy thereof to any person making the complaint. The letter shall advise the registrant that he or she has the right to request in writing, within twenty days after proven receipt, that formal disciplinary proceedings be initiated against him or her to adjudicate the propriety of the conduct upon which the letter of admonition is based. If the request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be processed by means of formal disciplinary proceedings.

(5) All administrative fines collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the division of real estate cash fund.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 660, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-405 as it existed prior to 2019.

12-10-506. Powers of commission - injunction - rules. (1) The commission may apply to a court of competent jurisdiction for an order enjoining any act or practice that constitutes a violation of this part 5, and, upon a showing that a person is engaging or intends to engage in any such act or practice, an injunction, restraining order, or other appropriate order shall be granted by the court, regardless of the existence of another remedy therefor. Any notice, hearing, or duration of any injunction or restraining order shall be made in accordance with the provisions of the San Andreas rules of civil procedure.

(2) The commission may apply to a court of competent jurisdiction for the appointment of a receiver if it determines that the appointment is necessary to protect the property or interests of purchasers of a subdivision or part thereof.

(3) The commission shall issue or deny a certificate or additional registration within sixty days from the date of receipt of the application by the commission. The commission may make necessary investigations and inspections to determine whether any developer has violated this part 5 or any lawful rule promulgated by the commission. If, after an application by a developer has been submitted pursuant to section 12-10-503 or information has been submitted pursuant to section 12-10-504, the commission determines that an inspection of a subdivision is necessary, it shall complete the inspection within sixty days from the date of filing of the application or information, or the right of inspection is waived and the lack thereof shall not be grounds for denial of a registration.

(4) The commission, the director, or the administrative law judge appointed for a hearing may issue a subpoena compelling the attendance and testimony of witnesses and the production

of books, papers, or records pursuant to an investigation or hearing of the commission. Any such subpoena shall be served in the same manner as for subpoenas issued by district courts.

(5) The commission has the power to make any rules necessary for the enforcement or administration of this part 5.

(6) The commission shall adopt, promulgate, amend, or repeal such rules as are necessary to:

(a) Require written disclosures to any purchasers as provided in subsection (7) of this section and to prescribe and require that standardized forms be used by subdivision developers in connection with the sale or lease of a subdivision or any part thereof, except as otherwise provided in section 12-10-503 (3)(f); and

(b) Require that developers maintain certain business records for a period of at least seven years.

(7) The commission may require any developer to make written disclosures to purchasers in their contracts of sale or by separate written documents if the commission finds that the disclosures are necessary for the protection of the purchasers.

(8) The commission or its designated representative may audit the accounts of any homeowners' association, the funds of which are controlled by a developer.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 661, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-406 as it existed prior to 2019.

Cross references: For the San Andreas rules of civil procedure concerning subpoenas and injunctions, see C.R.C.P. 45 and 65.

12-10-507. Violation - penalty. Any person who fails to register as a developer in violation of this part 5 commits a class 6 felony and shall be punished as provided in section 18-1.3-401. Any agreement or contract for the sale or lease of a subdivision or part thereof shall be voidable by the purchaser and unenforceable by the developer unless the developer was duly registered under the provisions of this part 5 when the agreement or contract was made.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 663, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-407 as it existed prior to 2019.

12-10-508. Repeal of part - subject to review. This part 5 is repealed, effective September 1, 2026. Before the repeal, this part 5 is scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 663, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-408 as it existed prior to 2019.

PART 6

REAL ESTATE APPRAISERS

Law reviews: For article, "Professional Standards for the Appraiser", see 22 S.A. Law. 1263 (1993).

12-10-601. Legislative declaration. The general assembly finds, determines, and declares that sections 12-10-602 to 12-10-623 are enacted pursuant to the requirements of the "Real Estate Appraisal Reform Amendments", Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended, 12 U.S.C. secs. 3331 to 3351. The general assembly further finds, determines, and declares that sections 12-10-602 to 12-10-623 are intended to implement the requirements of federal law in the least burdensome manner to real estate appraisers and appraisal management companies. Licensed ad valorem appraisers licensed under this article 10 are not regulated by the federal "Real Estate Appraisal Reform Amendments", Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended, 12 U.S.C. secs. 3331 to 3351.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 663, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-701 as it existed prior to 2019.

12-10-602. Definitions. As used in this part 6, unless the context otherwise requires:

(1) (a) "Appraisal", "appraisal report", or "real estate appraisal" means a written or oral analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate that is transmitted to the client upon the completion of an assignment. These terms include a valuation, which is an opinion of the value of real estate, and an analysis, which is a general study of real estate not specifically performed only to determine value; except that the terms include a valuation completed by an appraiser employee of a county assessor as defined in section 39-1-102 (2).

(b) The terms do not include an analysis, valuation, opinion, conclusion, notation, or compilation of data by an officer, director, regularly salaried employee, or agent of a financial institution or its affiliate, made for internal use only by the financial institution or affiliate, concerning an interest in real estate that is owned or held as collateral by the financial institution or affiliate and that is not represented or deemed to be an appraisal except to the financial institution, the agencies regulating the financial institution, and any secondary markets that purchase real estate secured loans. An appraisal prepared by an officer, director, regularly salaried employee, or agent of a financial institution who is not licensed or certified under this part 6 must contain a written notice that the preparer is not licensed or certified as an appraiser under this part 6.

(c) "Appraisal", "appraisal report", or "real estate appraisal" does not include a federally authorized "waiver valuation", as defined in 49 CFR 24.2 (a)(33), as amended.

(2) (a) "Appraisal management company" or "AMC" means, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization, any

external third party authorized either by a creditor in a consumer credit transaction secured by a consumer's principal dwelling that oversees an appraiser panel or by an underwriter of, or other principal in, the secondary mortgage markets that oversees an appraiser panel to:

(I) Recruit, select, and retain appraisers;

(II) Contract with licensed and certified appraisers to perform appraisal assignments;

(III) Manage the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed; or

(IV) Review and verify the work of appraisers.

(b) "Appraisal management company" or "AMC" does not include:

(I) A corporation, limited liability company, sole proprietorship, or other entity that directly performs appraisal services;

(II) A corporation, limited liability company, sole proprietorship, or other entity that does not contract with appraisers for appraisal services, but that solely distributes orders to a client-selected panel of appraisers; and

(III) A mortgage company, or its subsidiary, that manages a panel of appraisers who are engaged to provide appraisal services on mortgage loans either originated by the mortgage company or funded by the mortgage company with its own funds.

(3) "Board" means the board of real estate appraisers created in section 12-10-603.

(4) "Client" means the party or parties who engage an appraiser or an appraisal management company for a specific assignment.

(5) "Consulting services" means services performed by an appraiser that do not fall within the definition of an "independent appraisal" in subsection (7) of this section. "Consulting services" includes marketing, financing and feasibility studies, valuations, analyses, and opinions and conclusions given in connection with real estate brokerage, mortgage banking, and counseling and advocacy in regard to property tax assessments and appeals thereof; except that, if in rendering the services the appraiser acts as a disinterested third party, the work is deemed an independent appraisal and not a consulting service. Nothing in this subsection (5) precludes a person from acting as an expert witness in valuation appeals.

(5.5) "Evaluation" means an opinion about the market value of real estate that is:

(a) Made in accordance with the 2010 "Interagency Appraisal and Evaluation Guidelines" developed by the following federal agencies that regulate financial institutions:

(I) The federal reserve board;

(II) The office of the comptroller of the currency;

(III) The federal deposit insurance corporation;

(IV) The office of thrift supervision; and

(V) The national credit union administration; and

(b) Provided to a financial institution for use in a real-estate-related transaction for which an appraisal is not required by the federal agencies listed in subsection (5.5)(a) of this section.

(6) "Financial institution" means any "bank" or "savings association", as those terms are defined in 12 U.S.C. sec. 1813, any state bank incorporated under title 11, any state or federally chartered credit union, or any company that has direct or indirect control over any of those entities.

(7) "Independent appraisal" means an engagement for which an appraiser is employed or retained to act as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in or aspects of identified real estate.

(8) (a) "Panel" or "appraiser panel" means a network, list, or roster of licensed or certified appraisers approved by an AMC to perform appraisals as independent contractors for the AMC.

(b) Appraisers on an AMC's appraiser panel include both:

(I) Appraisers accepted by the AMC for consideration for future appraisal assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions; and

(II) Appraisers engaged by the AMC to perform one or more appraisals in covered transactions or for secondary mortgage market participants in connection with covered transactions.

(c) An appraiser is an independent contractor for purposes of this subsection (8) if the appraiser is treated as an independent contractor by the AMC for purposes of federal income taxation.

(9) (a) "Real estate appraiser" or "appraiser" means a person who provides an estimate of the nature, quality, value, or utility of an interest in, or aspect of, identified real estate and includes one who estimates value and who possesses the necessary qualifications, ability, and experience to execute or direct the appraisal of real property.

(b) "Real estate appraiser" or "appraiser" does not include:

(I) A person who conducts appraisals strictly of personal property;

(II) A person licensed as a broker pursuant to part 2 of this article 10 who provides an opinion of value that is not represented as an appraisal and is not used for purposes of obtaining financing;

(III) A person licensed as a certified public accountant pursuant to article 100 of this title 12, and otherwise regulated, as long as the person does not represent his or her opinions of value for real estate as an appraisal;

(IV) A corporation, acting through its officers or regularly salaried employees, when conducting a valuation of real estate property rights owned, to be purchased, or sold by the corporation;

(V) A person who conducts appraisals strictly of water rights or of mineral rights;

(VI) A right-of-way acquisition agent, an appraiser who is licensed and certified pursuant to this part 6, or any other individual who has sufficient understanding of the local real estate market to be qualified to make a waiver valuation when the agent, appraiser, or other qualified individual is employed by or contracts with a public entity and provides an opinion of value that is not represented as an appraisal and when, for any purpose, the property or portion of property being valued is valued at twenty-five thousand dollars or less, as permitted by federal law and 49 CFR 24.102 (c)(2), as amended;

(VII) An officer, director, regularly salaried employee, or agent of a financial institution or its affiliate who makes, for internal use only by the financial institution or affiliate, an analysis, evaluation, opinion, conclusion, notation, or compilation of data with respect to an appraisal so long as the person does not make a written adjustment of the appraisal's conclusion as to the value of the subject real property;

(VIII) An officer, director, regularly salaried employee, or agent of a financial institution or its affiliate who makes an internal analysis, valuation, opinion, conclusion, notation, or compilation of data concerning an interest in real estate that is owned or held as collateral by the financial institution or its affiliate; or

(IX) A person who represents property owners as an advocate in tax or valuation protests and appeals pursuant to title 39.

(10) "Uniform standards of professional appraisal practice" means the standards for the appraisal profession in the United States, as adopted by congress in 1989 through the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", Pub.L. 101-73, as amended, and that the Appraisal Foundation periodically updates.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 663, § 1, effective October 1; (2)(a)(I) amended, (SB 19-046), ch. 50, p. 164, § 3, effective October 1. **L. 2020:** (1)(b), (9)(b)(VII), and (9)(b)(VIII) amended, (SB 20-047), ch. 17, p. 71, § 1, effective September 14. **L. 2022:** (5.5) and (10) added, (HB 22-1261), ch. 315, p. 2248, § 3, effective August 10.

Editor's note: (1) This section is similar to former § 12-61-702 as it existed prior to 2019; except that § 12-61-702 (7) and (8) were relocated to § 12-10-101 (1) and (2), respectively.

(2) Before its relocation in 2019, this section was amended in SB 19-046. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from March 25, 2019, to October 1, 2019, see SB 19-046, chapter 50, Session Laws of San Andreas 2019.

Cross references: For the legislative declaration in SB 19-046, see section 1 of chapter 50, Session Laws of San Andreas 2019.

12-10-603. Board of real estate appraisers - creation - compensation - immunity - legislative declaration - subject to review - repeal of part. (1) (a) There is hereby created in the division of real estate a board of real estate appraisers consisting of seven members appointed by the governor with the consent of the senate. Of the members, three shall be licensed or certified appraisers, one of whom shall have expertise in eminent domain matters; one shall be a county assessor in office; one shall be an officer or employee of a commercial bank experienced in real estate lending; one shall be an officer or employee of an appraisal management company; and one shall be a member of the public at large not engaged in any of the businesses represented by the other members of the board.

(b) Members of the board shall hold office for terms of three years. In the event of a vacancy by death, resignation, removal, or otherwise, the governor shall appoint a member to fill the unexpired term. The governor has the authority to remove any member for misconduct, neglect of duty, or incompetence.

(2) (a) The board is a **type 1** entity, as defined in section 24-1-105, and exercises its powers and performs its duties and functions under the division of real estate.

(b) The general assembly finds, determines, and declares that the organization of the board under the division as a **type 1** entity will provide the autonomy necessary to avoid

potential conflicts of interest between the responsibility of the board in the regulation of real estate appraisers and the responsibility of the division in the regulation of real estate brokers and salespersons. The general assembly further finds, determines, and declares that the placement of the board as a **type 1** entity under the division is consistent with the organizational structure of state government.

(3) Each member of the board shall receive the same compensation and reimbursement of expenses as is provided for members of boards and commissions in the division of professions and occupations pursuant to section 12-20-103 (6). Payment for all per diem compensation and expenses shall be made out of annual appropriations from the division of real estate cash fund provided for in section 12-10-605.

(4) Members of the board, consultants, and expert witnesses are immune from liability in any civil action based upon any disciplinary proceedings or other official acts they performed in good faith pursuant to this part 6.

(5) A majority of the board constitutes a quorum for the transaction of all business, and actions of the board require a vote of a majority of the members present in favor of the action taken.

(6) This part 6 is repealed, effective September 1, 2031. Before the repeal, this part 6 is scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 666, § 1, effective October 1. **L. 2022:** (2)(a) amended, (SB 22-162), ch. 469, p. 3392, § 111, effective August 10; (6) amended, (HB 22-1261), ch. 315, p. 2247, § 2, effective August 10. **L. 2023:** (2)(b) amended, (HB 23-1301), ch. 303, p. 1817, § 10, effective August 7.

Editor's note: This section is similar to former § 12-61-703 as it existed prior to 2019.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of San Andreas 2022.

12-10-604. Powers and duties of the board - rules. (1) In addition to all other powers and duties imposed upon it by law, the board has the following powers and duties:

(a) (I) To promulgate and amend, as necessary, rules pursuant to article 4 of title 24 for the implementation and administration of this part 6 and as required to comply with the federal "Real Estate Appraisal Reform Amendments", Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended, 12 U.S.C. secs. 3331 to 3351, and with any requirements imposed by amendments to that federal law.

(II) The board shall not establish any requirements that are more stringent than the requirements of any applicable federal law.

(III) Licensed ad valorem appraisers are not regulated by the federal "Real Estate Appraisal Reform Amendments", Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended, 12 U.S.C. secs. 3331 to 3351, but the board shall adopt rules regarding minimum qualifications and standards of practice for licensed ad valorem appraisers.

(IV) In any list or registry it maintains, the board shall identify or separately account for any appraisal management company that oversees a panel of more than fifteen certified or licensed appraisers in San Andreas, or twenty-five or more certified or licensed appraisers in all states in which it does business, within a given year.

(b) To charge application, examination, and license and certificate renewal fees established pursuant to section 12-10-215 from all applicants for licensure, certification, examination, and renewal under this part 6. The board shall not refund any fees received from applicants seeking licensure, certification, examination, or renewal.

(c) Through the department and subject to appropriations made to the department, to employ administrative law judges, appointed pursuant to part 10 of article 30 of title 24, on a full-time or part-time basis to conduct any hearings required by this part 6;

(d) To issue, deny, or refuse to renew a license or certificate pursuant to this part 6;

(e) To take disciplinary actions in conformity with this part 6;

(f) To delegate to the director the administration and enforcement of this part 6 and the authority to act on behalf of the board on occasions and in circumstances that the board directs;

(g) (I) To develop, purchase, or contract for any examination required for the administration of this part 6, to offer each examination at least twice a year or, if demand warrants, at more frequent intervals, and to establish a passing score for each examination that reflects a minimum level of competency.

(II) If study materials are developed by a testing company or other entity, the board shall make the materials available to persons desiring to take examinations pursuant to this part 6. The board may charge fees for the materials to defray any costs associated with making the materials available.

(h) In compliance with article 4 of title 24, to make investigations; subpoena persons and documents, which subpoenas may be enforced by a court of competent jurisdiction if not obeyed; hold hearings; and take evidence in all matters relating to the exercise of the board's power under this part 6;

(i) Pursuant to section 1119 (b) of Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", Pub.L. 101-73, as amended, to apply, if necessary, for a federal waiver of the requirement relating to certification or licensing of a person to perform appraisals and to make the necessary written determinations specified in that section for purposes of making the application; and

(j) If the board has reasonable cause to believe that a person, partnership, limited liability company, or corporation is violating this part 6, to enter an order requiring the individual or appraisal management company to cease and desist the violation.

(k) Repealed.

(2) The board shall maintain or preserve, for seven years, licensing history records of a person licensed or certified under this part 6. Complaints of record in the office of the board and board investigations, including board investigative files, are closed to public inspection. Stipulations and final agency orders are public record and are subject to sections 24-72-203 and 24-72-204.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 667, § 1, effective October 1; (1)(k) repealed, (HB 19-1264), ch. 420, p. 3681, § 11, effective October 1. **L. 2022:** (1)(a)(IV) amended, (HB 22-1261), ch. 315, p. 2248, § 4, effective August 10.

Editor's note: (1) This section is similar to former § 12-61-704 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in HB 19-1264. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from June 30, 2019, to October 1, 2019, see HB 19-1264, chapter 420, Session Laws of San Andreas 2019.

12-10-605. Fees, penalties, and fines collected under part 6. All fees, penalties, and fines collected pursuant to this part 6, not including fees retained by contractors pursuant to contracts entered into in accordance with section 12-10-203, 12-10-606, or 24-34-101, shall be transmitted to the state treasurer, who shall credit the same to the division of real estate cash fund, created in section 12-10-215.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 669, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-705 as it existed prior to 2019.

12-10-606. Qualifications for licensing and certification of appraisers - continuing education - rules - evaluations - definitions. (1) (a) The board shall, by rule, prescribe requirements for the initial licensing or certification of persons under this part 6 to meet the requirements of the "Real Estate Appraisal Reform Amendments", Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended, 12 U.S.C. secs. 3331 to 3351, and shall develop, purchase, or contract for examinations to be passed by applicants. The board shall not establish any requirements for initial licensing or certification that are more stringent than the requirements of any applicable federal law; except that all applicants shall pass an examination offered by the board. If there is no applicable federal law, the board shall consider and may use as guidelines the most recent available criteria published by the Appraiser Qualifications Board of the Appraisal Foundation or its successor organization.

(b) The four levels of appraiser licensure and certification, pursuant to subsection (1)(a) of this section, are defined as follows:

(I) "Certified general appraiser" means an appraiser meeting the requirements set by the board for general certification.

(II) "Certified residential appraiser" means an appraiser meeting the requirements set by the board for residential certification.

(III) "Licensed ad valorem appraiser" means an appraiser meeting the requirements set by the board for ad valorem appraiser certification. Only a county assessor, employee of a county assessor's office, or employee of the division of property taxation in the department of local affairs may obtain or possess an ad valorem appraiser certification.

(IV) "Licensed appraiser" means an appraiser meeting the requirements set by the board for a license.

(c) A county assessor or employee of a county assessor's office who is a licensed ad valorem appraiser may not perform real estate appraisals outside of his or her official duties.

(d) The board shall transfer persons employed in a county assessor's office or in the division of property taxation in the department of local affairs who are registered appraisers as of

July 1, 2013, to the category of licensed ad valorem appraiser. The board shall allow these persons, until December 31, 2015, to meet any additional requirements imposed by the board pursuant to section 12-10-604 (1)(a).

(2) (a) The board shall, by rule, prescribe continuing education requirements for persons licensed or certified as certified general appraisers, certified residential appraisers, or licensed appraisers as needed to meet the requirements of the "Real Estate Appraisal Reform Amendments", Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended, 12 U.S.C. secs. 3331 to 3351. The board shall not establish any continuing education requirements that are more stringent than the requirements of any applicable federal law; except that all persons licensed or certified under this part 6 are subject to continuing education requirements. If there is no applicable federal law, the board shall consider and may use as guidelines the most recent available criteria published by the Appraiser Qualifications Board of the Appraisal Foundation or its successor organization.

(b) The board shall, by rule, prescribe continuing education requirements for licensed ad valorem appraisers.

(3) Notwithstanding any provision of this section to the contrary, the criteria established by the board for the licensing or certification of appraisers pursuant to this part 6 shall not include membership or lack of membership in any appraisal organization.

(4) (a) Subject to section 12-10-619 (2), all appraiser employees of county assessors shall be licensed or certified as provided in subsections (1) and (2) of this section. Obtaining and maintaining a license or certificate under either subsection (1) or (2) of this section entitles an appraiser employee of a county assessor to perform all real estate appraisals required to fulfill the person's official duties.

(b) Appraiser employees of county assessors who are employed to appraise real property are subject to this part 6; except that appraiser employees of county assessors who are employed to appraise real property are not subject to disciplinary actions by the board on the ground that they have performed appraisals beyond their level of competency when appraising real estate in fulfillment of their official duties. County assessors, if licensed or certified as provided in subsections (1) and (2) of this section, are not subject to disciplinary actions by the board on the ground that they have performed appraisals beyond their level of competency when appraising real estate in fulfillment of their official duties.

(c) The county in which an appraiser employee of a county assessor is employed shall pay all reasonable costs incurred by the appraiser employee of the county assessor to obtain and maintain a license or certificate pursuant to this section.

(5) The board shall not issue an appraiser's license as referenced in subsection (1)(b)(IV) of this section unless the applicant has met the minimum appraisal experience requirement established by the Appraiser Qualifications Board of the Appraisal Foundation or its successor organization.

(6) (a) The board shall not issue a license or certification until the applicant demonstrates that the applicant meets the fitness standards established by board rule and submits a set of fingerprints to the San Andreas bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing records of the San Andreas bureau of investigation and the federal bureau of investigation. Each person submitting a set of fingerprints shall pay the fee established by the San Andreas bureau of investigation for conducting the fingerprint-based criminal history record check to the bureau. Upon completion of the

fingerprint-based criminal history record check, the bureau shall forward the results to the board. The board shall require a name-based judicial record check, as defined in section 22-2-119.3 (6)(d), for an applicant who has a record of arrest without a disposition. The applicant shall pay the costs associated with a name-based judicial record check. The board may deny an application for licensure or certification based on the outcome of the record check and may establish criminal history requirements more stringent than those established by any applicable federal law. At a minimum, the board shall adopt the criminal history requirements established by any applicable federal law.

(b) An applicant for certification as a licensed ad valorem appraiser is not subject to the fingerprinting and background check requirements of subsection (6)(a) of this section.

(7) (a) The board shall, by rule, authorize an exemption from compliance with the uniform standards of professional appraisal practice for a licensed appraiser performing an evaluation; except that the board's rules must not exempt a licensed appraiser performing an evaluation from complying with the ethics, record-keeping, competency, and scope-of-work standards of the uniform standards of professional appraisal practice.

(b) A licensed appraiser may perform an evaluation if conducted in accordance with board rules promulgated under subsection (7)(a) of this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 669, § 1, effective October 1; (6)(a) amended, (HB 19-1166), ch. 125, p. 565, § 69, effective October 1. **L. 2022:** (6) amended, (HB 22-1270), ch. 114, p. 515, § 10, effective April 21; (5) amended and (7) added, (HB 22-1261), ch. 315, p. 2248, § 5, effective August 10.

Editor's note: (1) This section is similar to former § 12-61-706 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in HB 19-1166. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from April 18, 2019, to October 1, 2019, see HB 19-1166, chapter 125, Session Laws of San Andreas 2019.

12-10-607. Appraisal management companies - application for license - exemptions. (1) An applicant shall apply for a license as an appraisal management company, or as a controlling appraiser, to the board in a manner prescribed by the board.

(2) The board may grant appraisal management company licenses to individuals, partnerships, limited liability companies, or corporations. A partnership, limited liability company, or corporation, in its application for a license, shall designate a controlling appraiser who is actively certified in a state recognized by the appraisal subcommittee of the federal financial institutions examination council or its successor entity. The controlling appraiser is responsible for the licensed practices of the partnership, limited liability company, or corporation and all persons employed by the entity. The application of the partnership, limited liability company, or corporation and the application of the appraiser designated by it as the controlling appraiser shall be filed with the board. The board has jurisdiction over the appraiser so designated and over the partnership, limited liability company, or corporation.

(3) The board shall not issue a license to any partnership, limited liability company, or corporation unless and until the appraiser designated by the partnership, limited liability

company, or corporation as controlling appraiser and each individual who owns more than ten percent of the entity demonstrates that the person meets the fitness standards established by board rule and submits a set of fingerprints to the San Andreas bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing records of the San Andreas bureau of investigation and the federal bureau of investigation. Each person submitting a set of fingerprints shall pay the fee established by the San Andreas bureau of investigation for conducting the fingerprint-based criminal history record check to the bureau. Upon completion of the fingerprint-based criminal history record check, the bureau shall forward the results to the board. The board shall require a name-based judicial record check, as defined in section 22-2-119.3 (6)(d), for an applicant who has a record of arrest without a disposition. The applicant shall pay the costs associated with a name-based judicial record check. The board may deny an application for licensure or refuse to renew a license based on the outcome of the record check. The board may require criminal history requirements more stringent than those established by any applicable federal law. At a minimum, the board shall adopt the criminal history requirements established by any applicable federal law.

(4) The board shall not issue a license to any partnership, limited liability company, or corporation if the appraiser designated by the entity as controlling appraiser has previously had, in any state, an appraiser registration, license, or certificate refused, denied, canceled, surrendered in lieu of revocation, or revoked. A disciplinary action resulting in refusal, denial, cancellation, surrender in lieu of revocation, or revocation relating to a registration, license, or certification as an appraiser registered, licensed, or certified under this part 6 or any related occupation in any other state, territory, or country for disciplinary reasons is prima facie evidence of grounds for denial of a license by the board.

(5) The board shall not issue a license to any partnership, limited liability company, or corporation if it is owned, in whole or in part, directly or indirectly, by any person who has had, in any state, an appraiser license, registration, or certificate refused, denied, canceled, surrendered in lieu of revocation, or revoked. A disciplinary action resulting in refusal, denial, cancellation, surrender in lieu of revocation, or revocation relating to a license, registration, or certification as an appraiser licensed, registered, or certified under this part 6 or any related occupation in any other state, territory, or country for disciplinary reasons is prima facie evidence of grounds for denial of a license by the board.

(6) The board may deny an application for a license for any partnership, limited liability company, or corporation if the partnership, limited liability company, or corporation has previously had a license revoked or surrendered a license in lieu of revocation. A disciplinary action resulting in the surrender in lieu of revocation or the revocation of a license as an appraisal management company under this part 6 or any related occupation in any other state, territory, or country for disciplinary reasons may be deemed to be prima facie evidence of grounds for denial of a license by the board.

(7) Each appraisal management company must maintain a definite place of business. If the appraisal management company is domiciled in another state, the appraiser designated by the appraisal management company as controlling appraiser is responsible for supervising all licensed activities that occur in San Andreas. All licensed actions occurring within the state of San Andreas must occur under the name under which the appraisal management company is licensed or its trade name adopted in accordance with San Andreas law.

(8) An application that is submitted by an appraisal management company that is:

(a) A partnership must be properly registered with the San Andreas department of revenue or properly filed with the San Andreas secretary of state and in good standing, proof of which must be included in the application. If an assumed or trade name is to be used, it must be properly filed with the San Andreas department of revenue or filed and accepted by the San Andreas secretary of state, proof of which must be included with the application.

(b) A limited liability company must be properly registered with the San Andreas secretary of state and in good standing, proof of which must be included with the application. If an assumed or trade name is to be used, it must be properly filed with the San Andreas secretary of state, proof of which must be included with the application.

(c) A corporation must be registered as a foreign corporation or properly incorporated with the San Andreas secretary of state and in good standing, proof of which must be included with the application. If an assumed or trade name is to be used, it must be properly filed with the San Andreas secretary of state, proof of which must be included with the application.

(9) Financial institutions and appraisal management company subsidiaries that are owned and controlled by an insured depository institution, as defined in 12 U.S.C. sec. 1813 (c)(2), as amended, and regulated by the federal office of the comptroller of the currency, the board of governors of the federal reserve system, or the federal deposit insurance corporation are not required to register with or be licensed by the board. This exemption includes a panel of appraisers who are engaged to provide appraisal services and are administered by a financial institution regulated by one of the federal financial regulatory agencies listed in this subsection (9).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 671, § 1, effective October 1; (3) amended, (HB 19-1166), ch. 125, p. 565, § 70, effective October 1. **L. 2022:** (3) amended, (HB 22-1270), ch. 114, p. 515, § 11, effective April 21; (9) amended, (HB 22-1261), ch. 315, p. 2249, § 6, effective August 10.

Editor's note: (1) This section is similar to former § 12-61-707 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in HB 19-1166. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from April 18, 2019, to October 1, 2019, see HB 19-1166, chapter 125, Session Laws of San Andreas 2019.

12-10-608. Errors and omissions insurance - duties of the division - certificate of coverage - group plan made available - rules. (1) Every licensee under this part 6, except an appraiser who is employed by a state or local governmental entity or an inactive appraiser or appraisal management company, shall maintain errors and omissions insurance to cover all activities contemplated under this part 6. The division shall make the errors and omissions insurance available to all licensees by contracting with an insurer for a group policy after a competitive bid process in accordance with article 103 of title 24. A group policy obtained by the division must be available to all licensees with no right on the part of the insurer to cancel any licensee. A licensee may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the division.

(2) (a) If the division is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the group program at a reasonable annual premium, as determined by the division, a licensee shall independently obtain the errors and omissions insurance required by this section.

(b) The division shall solicit and consider information and comments from interested persons when determining the reasonableness of annual premiums.

(3) The division shall determine the terms and conditions of coverage required under this section based on rules promulgated by the board. Each licensee shall be notified of the required terms and conditions at least thirty days before the annual premium renewal date as determined by the division. Each licensee shall file a certificate of coverage showing compliance with the required terms and conditions with the division by the annual premium renewal date, as determined by the division.

(4) In addition to all other powers and duties conferred upon the board by this part 6, the board is authorized and directed to adopt rules it deems necessary or proper to carry out the requirements of this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 673, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-708 as it existed prior to 2019.

12-10-609. Bond required. (1) Before the board issues a license to an applicant for an appraisal management company license, the applicant shall post with the board a surety bond in the amount of twenty-five thousand dollars. A licensed appraisal management company shall maintain the required bond at all times.

(2) The surety bond shall require the surety to provide notice to the board within thirty days if payment is made from the surety bond or if the bond is canceled.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 674, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-709 as it existed prior to 2019.

12-10-610. Expiration of licenses - renewal - penalties - fees - rules. (1) (a) All licenses or certificates expire pursuant to a schedule established by the director and may be renewed or reinstated pursuant to this section. Upon compliance with this section and any applicable rules of the board regarding renewal, including the payment of a renewal fee plus a reinstatement fee established pursuant to subsection (1)(b) of this section, the expired license or certificate shall be reinstated. A real estate appraiser's license or certificate that has not been renewed for a period greater than two years shall not be reinstated, and the person must submit a new application for licensure or certification.

(b) A person who fails to renew his or her license or certificate before the applicable renewal date may have it reinstated if the person submits an application as prescribed by the board:

(I) Within thirty-one days after the date of expiration, by payment of the regular renewal fee;

(II) More than thirty-one days, but within one year, after the date of expiration, by payment of the regular renewal fee and payment of a reinstatement fee equal to one-third of the regular renewal fee; or

(III) More than one year, but within two years, after the date of expiration, by payment of the regular renewal fee and payment of a reinstatement fee equal to two-thirds of the regular renewal fee.

(2) If the federal registry fee collected by the board and transmitted to the federal financial institutions examination council is increased prior to expiration of a license or certificate, the board shall collect the amount of the increase in the fee from the holder of the license or certificate and forward the amount to the council annually. The federal registry fee does not apply to licensed ad valorem appraisers licensed under this article 10.

(3) (a) If the applicant has complied with this section and any applicable rules of the board regarding renewal, except for the continuing education requirements pursuant to section 12-10-606, the licensee may renew the license on inactive status. An inactive license may be activated if the licensee submits written certification of compliance with the required number of continuing education hours as determined by the Appraiser Qualifications Board of the Appraisal Foundation or its successor organization. The board may adopt rules establishing procedures to facilitate reactivation of licenses.

(b) The holder of an inactive license shall not perform a real estate appraisal or appraisal management duties.

(c) The holder of an inactive license shall not hold himself or herself out as having an active license pursuant to this part 6.

(4) At the time of renewal or reinstatement, every licensee, certificate holder, and person or individual who owns more than ten percent of an appraisal management company shall submit a set of fingerprints to the San Andreas bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing records of the San Andreas bureau of investigation and the federal bureau of investigation, if the person has not previously done so for issuance of a license or certification by the board. Each person submitting a set of fingerprints shall pay the fee established by the San Andreas bureau of investigation for conducting the fingerprint-based criminal history record check to the bureau. The bureau shall forward the results to the board. The board shall require a name-based judicial record check, as defined in section 22-2-119.3 (6)(d), for an applicant who has a record of arrest without a disposition. The applicant shall pay the costs associated with a name-based judicial record check. The board may refuse to renew or reinstate a license or certification based on the outcome of the record check.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 674, § 1, effective October 1; (4) amended, (HB 19-1166), ch. 125, p. 566, § 71, effective October 1. **L. 2022:** (4) amended, (HB 22-1270), ch. 114, p. 516, § 12, effective April 21; (3)(a) amended, (HB 22-1261), ch. 315, p. 2249, § 7, effective August 10.

Editor's note: (1) This section is similar to former § 12-61-710 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in HB 19-1166. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from April 18, 2019, to October 1, 2019, see HB 19-1166, chapter 125, Session Laws of San Andreas 2019.

12-10-611. Licensure or certification by endorsement - temporary practice. (1) The board may issue a license or certification to an appraiser by endorsement to engage in the occupation of real estate appraisal to any applicant who has a license or certification in good standing as a real estate appraiser under the laws of another jurisdiction if:

(a) The applicant presents proof satisfactory to the board that, at the time of application for a San Andreas license or certificate by endorsement, the applicant possesses credentials and qualifications that are substantially equivalent to the requirements of this part 6; or

(b) The jurisdiction that issued the applicant a license or certificate to engage in the occupation of real estate appraisal has a law similar to this subsection (1) pursuant to which it licenses or certifies persons who are licensed real estate appraisers in this state.

(2) The board may specify, by rule, what constitutes substantially equivalent credentials and qualifications and the manner in which the board will review credentials and qualifications of an applicant.

(3) Pursuant to section 1122 (a) of Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", Pub.L. 101-73, as amended, the board shall recognize, on a temporary basis, the license or certification of an appraiser issued by another state if:

(a) The appraiser's business is of a temporary nature; and

(b) The appraiser applies for and is granted a temporary practice permit by the board.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 675, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-711 as it existed prior to 2019.

12-10-612. Denial of license or certificate - renewal - definition. (1) The board may determine whether an applicant for licensure or certification possesses the necessary qualifications for licensure or certification required by this part 6. The board may consider such qualities as the applicant's fitness and prior professional licensure and whether the applicant has been convicted of a crime. As used in this subsection (1), "applicant" includes any individual who owns, in whole or in part, directly or indirectly, an appraisal management company and any appraiser designated as a controlling appraiser by a partnership, limited liability company, or corporation acting as an appraisal management company.

(2) If the board determines that an applicant does not possess the applicable qualifications required by this part 6, or the applicant has violated this part 6, rules promulgated by the board, or any board order, the board may deny the applicant a license or certificate or deny the renewal or reinstatement of a license or certificate pursuant to section 12-10-610, and, in such instance, the board shall provide the applicant with a statement in writing setting forth the basis of the board's determination that the applicant does not possess the qualifications or professional competence required by this part 6. The applicant may request a hearing on the determination as provided in section 24-4-104 (9).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 676, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-712 as it existed prior to 2019.

12-10-613. Prohibited activities - grounds for disciplinary actions - procedures. (1) A real estate appraiser is in violation of this part 6 if the appraiser:

(a) Has been convicted of a felony or has had accepted by a court a plea of guilty or nolo contendere to a felony if the felony is related to the ability to act as a real property appraiser. A certified copy of the judgment of a court of competent jurisdiction of the conviction or plea is conclusive evidence of the conviction or plea. In considering the disciplinary action, the board shall be governed by the provisions of section 24-5-101.

(b) Has violated, or attempted to violate, directly or indirectly, or assisted in or abetted the violation of, or conspired to violate this part 6, a rule promulgated pursuant to this part 6, or an order of the board issued pursuant to this part 6;

(c) Has accepted any fees, compensation, or other valuable consideration to influence the outcome of an appraisal;

(d) Has used advertising that is misleading, deceptive, or false;

(e) Has used fraud or misrepresentation in obtaining a license or certificate under this part 6;

(f) Has conducted an appraisal in a fraudulent manner or used misrepresentation in any such activity;

(g) Has acted or failed to act in a manner that does not meet the generally accepted standards of professional appraisal practice as adopted by the board by rule. A certified copy of a malpractice judgment of a court of competent jurisdiction is conclusive evidence of the act or omission, but evidence of the act or omission is not limited to a malpractice judgment.

(h) Has performed appraisal services beyond his or her level of competency;

(i) Has been subject to an adverse or disciplinary action in another state, territory, or country relating to a license, certificate, or other authorization to practice as an appraiser. A disciplinary action relating to a license or certificate as an appraiser licensed or certified under this part 6 or any related occupation in any other state, territory, or country for disciplinary reasons is prima facie evidence of grounds for disciplinary action or denial of licensure or certification by the board. This subsection (1)(i) applies only to violations based upon acts or omissions in the other state, territory, or country that are also violations of this part 6.

(j) Has failed to disclose in the appraisal report the fee paid to the appraiser for a residential real property appraisal if the appraiser was engaged by an appraisal management company to complete the assignment; or

(k) Has engaged in conduct that would be grounds for the denial of a license or certification under section 12-10-612.

(2) If an applicant, a licensee, or a certified person has violated any provision of this section, the board may deny or refuse to renew the license or certificate, or, as specified in subsections (3) and (6) of this section, revoke or suspend the license or certificate, issue a letter of admonition to a licensee or certified person, place a licensee or certified person on probation, or impose public censure.

(3) When a complaint or an investigation discloses an instance of misconduct by a licensed or certified appraiser that, in the opinion of the board, does not warrant formal action by the board but should not be dismissed as being without merit, the board may send a letter of admonition to the appraiser against whom a complaint was made. The letter must advise the appraiser of the right to make a written request, within twenty days after receipt of the letter of admonition, to the board to begin formal disciplinary proceedings as provided in this section to adjudicate the conduct or acts on which the letter was based.

(4) The board may start a proceeding for discipline of a licensee or certified person when the board has reasonable grounds to believe that a licensee or certified person has committed any act or failed to act pursuant to the grounds established in subsection (1) of this section or when a request for a hearing is timely made under subsection (3) of this section.

(5) Disciplinary proceedings shall be conducted in the manner prescribed by the "State Administrative Procedure Act", article 4 of title 24.

(6) As authorized in subsection (2) of this section, disciplinary actions by the board may consist of the following:

(a) **Revocation of a license or certificate.** (I) Revocation of a license or certificate by the board means that the licensed or certified person shall surrender his or her license or certificate immediately to the board.

(II) Any person whose license or certificate to practice is revoked is ineligible to apply for a license or certificate issued under this part 6 until more than two years have elapsed from the date of surrender of the license or certificate. A reapplication after the two-year period is treated as a new application.

(b) **Suspension of a license or certificate.** Suspension of a license or certificate by the board is for a period to be determined by the board.

(c) **Probationary status.** The board may impose probationary status on a licensee or certified person. If the board places a licensee or certified person on probation, the board may include conditions for continued practice that the board deems appropriate to assure that the licensee or certified person is otherwise qualified to practice in accordance with generally accepted professional standards of professional appraisal practice, as specified in board rules, including any or all of the following:

(I) A requirement that the licensee or certified person take courses of training or education as needed to correct deficiencies found in the hearing;

(II) A review or supervision of his or her practice as may be necessary to determine the quality of the practice and to correct deficiencies in the practice; and

(III) The imposition of restrictions upon the nature of his or her appraisal practice to assure that he or she does not practice beyond the limits of his or her capabilities.

(d) **Public censure.** If, after notice and hearing, the director or the director's designee determines that the licensee or certified person has committed any of the acts specified in this section, the board may impose public censure.

(7) In addition to any other discipline imposed pursuant to this section, a person who violates this part 6 or the rules promulgated pursuant to this article 10 may be penalized by the board, upon a finding of a violation made pursuant to article 4 of title 24, by imposition of a fine of not more than one thousand dollars per violation.

(8) A person participating in good faith in making a complaint or report or participating in an investigative or administrative proceeding before the board pursuant to this article 10 is immune from any liability, civil or criminal, that otherwise might result by reason of the action.

(9) A licensee or certified person who has direct knowledge that a person has violated this part 6 shall report his or her knowledge to the board.

(10) The board, on its own motion or upon application at any time after the imposition of discipline as provided in this section, may reconsider its prior action and reinstate or restore a license or certificate, terminate probation, or reduce the severity of its prior disciplinary action. The decision of whether to take any further action or hold a hearing with respect to a prior disciplinary action rests in the sole discretion of the board.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 676, § 1, effective October 1. **L. 2022:** (3) and (7) amended, (HB 22-1261), ch. 315, p. 2249, § 8, effective August 10.

Editor's note: This section is similar to former § 12-61-713 as it existed prior to 2019.

12-10-614. Appraisal management companies - prohibited activities - grounds for disciplinary actions - procedures - rules. (1) The board, upon its own motion, may, and upon a complaint submitted to the board in writing by any person, shall, investigate the activities of a licensed appraisal management company; an appraiser designated as a controlling appraiser by a partnership, limited liability company, or corporation acting as an appraisal management company; or a person or an entity that assumes to act in that capacity within the state. The board, upon finding a violation, may impose an administrative fine not to exceed two thousand five hundred dollars for each separate offense; censure a licensee; place the licensee on probation and set the terms of probation; or temporarily suspend or permanently revoke a license, when the licensee has performed, is performing, or is attempting to perform any of the following acts:

(a) Failing to:

(I) Exercise due diligence when hiring or engaging a real estate appraiser to ensure that the real estate appraiser is appropriately credentialed by the board and competent to perform the assignment; and

(II) In the case of an AMC, establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with the requirements of the federal "Truth in Lending Act", 15 U.S.C. sec. 1639e (a) to (i), and regulations adopted pursuant to that act;

(b) Requiring an appraiser to indemnify the appraisal management company against liability, damages, losses, or claims other than those arising out of the services performed by the appraiser, including performance or nonperformance of the appraiser's duties and obligations, whether as a result of negligence or willful misconduct;

(c) Influencing or attempting to influence the development, reporting, result, or review of a real estate appraisal or the engagement of an appraiser through coercion, extortion, collusion, compensation, inducement, intimidation, bribery, or in any other manner. This prohibition does not prohibit an appraisal management company from requesting an appraiser to:

(I) Consider additional, appropriate property information;

(II) Provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(III) Correct errors in the appraisal report.

(d) Prohibiting an appraiser, in the completion of an appraisal service, from communicating with the client, any intended users, real estate brokers, tenants, property owners, management companies, or any other entity that the appraiser reasonably believes has information pertinent to the completion of an appraisal assignment; except that this subsection (1)(d) does not apply to communications between an appraiser and an appraisal management company's client if the client has adopted an explicit policy prohibiting the communication. If the client has adopted an explicit policy prohibiting communication by the appraiser with the client, communication by an appraiser to the client must be made in writing and submitted to the appraisal management company.

(e) Altering or modifying a completed appraisal report without the authoring appraiser's knowledge and written consent, and the consent of the intended user, except to modify the format of the report solely for transmission to the client and in a manner acceptable to the client;

(f) Requiring an appraiser to provide to the appraisal management company access to the appraiser's electronic signature;

(g) Failing to validate or verify that the work completed by an appraiser who is hired or engaged by the appraisal management company complies with state and federal regulations, including the uniform standards of professional appraisal practice, by conducting an annual audit of a random sample of the appraisals received within the previous year by the appraisal management company. The board shall establish annual appraisal review requirements by rule and shall solicit and consider information and comments from interested persons.

(h) Failing to make payment to an appraiser within sixty days after completion of the appraisal, unless otherwise agreed or unless the appraiser has been notified in writing that a bona fide dispute exists regarding the performance or quality of the appraisal;

(i) Failing to perform the terms of a written agreement with an appraiser hired or engaged to complete an appraisal assignment;

(j) Failing to disclose to an appraiser, at the time of engagement, the identity of the client;

(k) Using an appraisal report for a client other than the one originally contracted with, without the original client's written consent;

(l) Failing to maintain possession of, for future use or inspection by the board, for a period of at least five years or at least two years after final disposition of any judicial proceeding in which a representative of the appraisal management company provided testimony related to the assignment, whichever period expires last, the documents or records prescribed by the rules of the board or to produce the documents or records upon reasonable request by the board;

(m) Having been convicted of, or entering a plea of guilty, an Alford plea, or a plea of nolo contendere to, any misdemeanor or felony relating to the conduct of an appraisal, theft, embezzlement, bribery, fraud, misrepresentation, or deceit, or any other like crime under San Andreas law, federal law, or the laws of other states. A certified copy of the judgment of a court of competent jurisdiction of the conviction or other official record indicating that a plea was entered is conclusive evidence of the conviction or plea in any hearing under this part 6.

(n) Having been the subject of an adverse or disciplinary action in another state, territory, or country relating to a license, registration, certification, or other authorization to

practice as an appraisal management company. A disciplinary action relating to a registration, license, or certificate as an appraisal management company under this part 6 or any related occupation in any other state, territory, or country for disciplinary reasons is prima facie evidence of grounds for disciplinary action or denial of a license by the board. This subsection (1)(n) applies only to violations based upon acts or omissions in the other state, territory, or country that would violate this part 6 if committed in San Andreas.

(o) Violating the "San Andreas Consumer Protection Act", article 1 of title 6;

(p) Procuring, or attempting to procure, an appraisal management company license or renewing, reinstating, or reactivating, or attempting to renew, reinstate, or reactivate, an appraisal management company license by fraud, misrepresentation, or deceit or by making a material misstatement of fact in an application for a license;

(q) Knowingly misrepresenting or making false promises through agents, advertising, or otherwise;

(r) Failing to disclose to a client the fee amount paid to the appraiser hired or engaged to complete the appraisal upon completion of the assignment; or

(s) Disregarding, violating, or abetting, directly or indirectly, a violation of this part 6, a rule promulgated by the board pursuant to this part 6, or an order of the board entered pursuant to this part 6.

(2) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but should not be dismissed as being without merit, the board may send a letter of admonition to the licensee against whom the complaint was made. The letter must advise the licensee of the right to make a written request, within twenty days after receipt of the letter of admonition, to the board to begin formal disciplinary proceedings as provided in this section to adjudicate the conduct or acts on which the letter was based.

(3) Disciplinary proceedings must be conducted in the manner prescribed by the "State Administrative Procedure Act", article 4 of title 24.

(4) If a partnership, limited liability company, or corporation operating under the license of an appraiser designated and licensed as a controlling appraiser by the partnership, limited liability company, or corporation is guilty of any act listed in subsection (1) of this section, the board may suspend or revoke the right of the partnership, limited liability company, or corporation to conduct its business under the license of the controlling appraiser, whether or not the controlling appraiser had personal knowledge of the violation and whether or not the board suspends or revokes the individual license of the controlling appraiser.

(5) This part 6 does not relieve any person from civil liability or criminal prosecution under the laws of this state.

(6) A licensee or certified person having direct knowledge that a person or licensed partnership, limited liability company, or corporation has violated this part 6 shall report his or her knowledge to the board.

(7) The board, on its own motion or upon application, at any time after the imposition of discipline as provided in this section, may reconsider its prior action and reinstate or restore a license, terminate probation, or reduce the severity of its prior disciplinary action. The decision of whether to take any further action or hold a hearing with respect to the action rests in the sole discretion of the board.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 679, § 1, effective October 1. **L. 2022:** (2) amended, (HB 22-1261), ch. 315, p. 2250, § 9, effective August 10.

Editor's note: This section is similar to former § 12-61-714 as it existed prior to 2019.

12-10-615. Judicial review of final board actions and orders. Final actions and orders of the board under sections 12-10-612, 12-10-613, and 12-10-614 appropriate for judicial review are subject to judicial review in the court of appeals in accordance with section 24-4-106 (11).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 682, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-715 as it existed prior to 2019.

12-10-616. Unlawful acts - penalties. (1) It is unlawful for a person to:

(a) Violate section 12-10-613 (1)(c), (1)(e), or (1)(f) or perform a real estate appraisal without first having obtained a license or certificate from the board pursuant to this part 6;

(b) Accept a fee for an independent appraisal assignment that is contingent upon:

(I) Reporting a predetermined analysis, opinion, or conclusion; or

(II) The analysis, opinion, or conclusion reached; or

(III) The consequences resulting from the analysis, opinion, or conclusion;

(c) Misrepresent a consulting service as an independent appraisal; or

(d) Fail to disclose, in connection with a consulting service for which a contingent fee is or will be paid, the fact that a contingent fee is or will be paid.

(2) Any person who violates any provision of subsection (1) of this section commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501. Any person who subsequently violates any provision of subsection (1) of this section within five years after the date of a conviction for a violation of subsection (1) of this section commits a class 5 felony and shall be punished as provided in section 18-1.3-401.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 682, § 1, effective October 1. **L. 2021:** (2) amended, (SB 21-271), ch. 462, p. 3153, § 136, effective March 1, 2022.

Editor's note: This section is similar to former § 12-61-716 as it existed prior to 2019.

12-10-617. Appraisal management company license required - violations - injunction. (1) Except as provided in section 12-10-607 (9), it is unlawful for any person, partnership, limited liability company, or corporation to engage in the business of appraisal management in this state without first having obtained a license from the board. The board shall not grant a license to a person, partnership, limited liability company, or corporation until the person, partnership, limited liability company, or corporation demonstrates compliance with this part 6.

(2) The board may apply to a court of competent jurisdiction for an order enjoining an act or practice that constitutes a violation of this part 6, and, upon a showing that a person, partnership, limited liability company, or corporation is engaging or intends to engage in an act or practice that violates this part 6, the court shall grant an injunction, restraining order, or other appropriate order, regardless of the existence of another remedy for the violation. Any notice, hearing, or duration of an injunction or restraining order shall be made in accordance with the San Andreas rules of civil procedure.

(3) Any person, partnership, limited liability company, or corporation violating this part 6 by acting as an appraisal management company without having obtained a license or acting as an appraisal management company after the appraisal management company's license has been revoked or during any period for which the license was suspended commits a class 2 misdemeanor.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 683, § 1, effective October 1. **L. 2021:** (3) amended, (SB 21-271), ch. 462, p. 3154, § 137, effective March 1, 2022.

Editor's note: This section is similar to former § 12-61-717 as it existed prior to 2019.

12-10-618. Injunctive proceedings. (1) The board may, in the name of the people of the state of San Andreas, through the attorney general of the state of San Andreas, apply for an injunction in any court of competent jurisdiction to perpetually enjoin a person or appraisal management company from committing an act prohibited by this part 6.

(2) Injunctive proceedings under this section are in addition to and not in lieu of penalties and other remedies provided in this part 6.

(3) When seeking an injunction under this section, the board is not required to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from a continued violation.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 683, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-718 as it existed prior to 2019.

12-10-619. Special provision for appraiser employees of county assessors. (1) Except as provided in subsection (2) of this section, unless a federal waiver is applied for and granted pursuant to section 12-10-604 (1)(i), a person acting as a real estate appraiser in this state shall be licensed or certified as provided in this part 6. No person shall practice without a license or certificate or hold himself or herself out to the public as a licensed or certified real estate appraiser unless licensed or certified pursuant to this part 6.

(2) An appraiser employee of a county assessor who is employed to appraise real property shall be licensed or certified as provided in this part 6 and shall have two years from the date of taking office or the beginning of employment to comply with this part 6.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 684, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-719 as it existed prior to 2019.

12-10-620. Duties of board under federal law. (1) The board shall:

(a) Transmit to the appraisal subcommittee of the federal financial institutions examination council or its successor entity, no less than annually, a roster listing individuals and appraisal management companies that have received a certificate or license as provided in this part 6;

(b) Collect and transmit, on an annual basis, to the federal financial institutions examination council an annual registry fee, as prescribed by the appraisal subcommittee of the federal financial institutions examination council or its successor entity, from the following individuals and entities:

(I) Individuals and appraisal management companies that are licensed or certified pursuant to this part 6; and

(II) Appraisal management companies that operate as subsidiaries of federally regulated financial institutions; and

(c) Conduct its business and promulgate rules in a manner consistent with Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended, Pub.L. 101-73.

(2) The board shall not collect or transmit the information required by this section for licensed ad valorem appraisers.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 684, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-720 as it existed prior to 2019.

12-10-621. Business entities. (1) A corporation, partnership, bank, savings and loan association, savings bank, credit union, or other business entity may provide appraisal services if the appraisal is prepared by a certified general appraiser, a certified residential appraiser, or a licensed appraiser. An individual who is not a certified general appraiser, a certified residential appraiser, or a licensed appraiser may assist in the preparation of an appraisal if:

(a) The assistant is under the direct supervision of a certified or licensed appraiser; and

(b) The final appraisal document is approved and signed by an individual who is a certified or licensed appraiser.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 685, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-721 as it existed prior to 2019.

12-10-622. Provisions found not to comply with federal law null and void - severability. (1) If any provision of this part 6 is found by a court of competent jurisdiction or

by the appropriate federal agency not to comply with the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended, Pub.L. 101-73, the provision is null and void, but the remaining provisions of this part 6 are valid unless the remaining provisions alone are incomplete and are incapable of being executed in accordance with the legislative intent of this part 6.

(2) If the regulation of appraisal management companies is repealed from Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended, Pub.L. 101-73, the board's jurisdiction over these entities is also repealed. Before the repeal, the division shall review the regulation of appraisal management companies as provided in section 24-34-104. If the board's jurisdiction is repealed, the director shall notify the revisor of statutes of the date of the repeal.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 685, § 1, effective October 1.

Editor's note: (1) This section is similar to former § 12-61-722 as it existed prior to 2019.

(2) As of publication date, the revisor of statutes has not received the notice referred to in subsection (2).

12-10-623. Scope of article - regulated financial institutions - de minimis exemption. (1) (a) This article 10 does not apply to an appraisal relating to any real-estate-related transaction or loan made or to be made by a financial institution or its affiliate if the real-estate-related transaction or loan is excepted from appraisal regulations established by the primary federal regulator of the financial institution and the appraisal is performed by:

(I) An officer, director, regularly salaried employee, or agent of the financial institution or its affiliate; or

(II) A real estate broker licensed under this article 10 with whom the institution or affiliate has contracted for performance of the appraisal.

(b) The appraisal must not be represented or deemed to be an appraisal except to the financial institution, the agencies regulating the financial institution, and any secondary markets that purchase real estate secured loans. The appraisal must contain a written notice that the preparer is not licensed or certified as an appraiser under this part 6. Nothing in this subsection (1) exempts a person licensed or certified as an appraiser under this part 6 from regulation as provided in this part 6.

(2) Nothing in this article 10 limits the ability of any federal or state regulator of a financial institution to require the financial institution to obtain appraisals as specified by the regulator.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 685, § 1, effective October 1. **L. 2020:** (1)(a)(I) amended, (SB 20-047), ch. 17, p. 72, § 2, effective September 14.

Editor's note: This section is similar to former § 12-61-723 as it existed prior to 2019.

PART 7

MORTGAGE LOAN ORIGINATORS

12-10-701. Short title. The short title of this part 7 is the "Mortgage Loan Originator Licensing and Mortgage Company Registration Act".

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 686, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-901 as it existed prior to 2019.

12-10-702. Definitions. As used in this part 7, unless the context otherwise requires:

(1) "Affiliate" means a person who, directly or indirectly, through intermediaries, controls, is controlled by, or is under the common control of another person addressed by this part 7.

(2) "Affordable housing dwelling unit" means an affordable housing dwelling unit as defined in section 29-26-102.

(3) "Board" means the board of mortgage loan originators created in section 12-10-703.

(4) "Borrower" means any person who consults with or retains a mortgage loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan.

(5) "Community development organization" means any community housing development organization or community land trust as defined by the federal "Cranston-Gonzalez National Affordable Housing Act" of 1990 or a community-based development organization as defined by the federal "Housing and Community Development Act of 1974", that is also either a private or public nonprofit organization that is exempt from taxation under section 501 (a) of the federal "Internal Revenue Code of 1986" pursuant to section 501 (c) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501 (a) and 501 (c), as amended, and that receives funding from the United States department of housing and urban development, San Andreas division of housing, San Andreas housing and finance authority, or United States department of agriculture rural development, or through a grantee of the United States department of housing and urban development, purely for the purpose of community housing development activities.

(6) "Depository institution" has the same meaning as set forth in the "Federal Deposit Insurance Act", 12 U.S.C. sec. 1813 (c), and includes a credit union.

(7) "Dwelling" shall have the same meaning as set forth in the federal "Truth in Lending Act", 15 U.S.C. sec. 1602 (w).

(8) "Federal banking agency" means the board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration, or the federal deposit insurance corporation.

(9) "HUD-approved housing counseling agency" means an agency that is either a private or public nonprofit organization that is exempt from taxation under section 501 (a) of the federal "Internal Revenue Code of 1986" pursuant to section 501 (c) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501 (a) and 501 (c), as amended, and approved by the United

States department of housing and urban development, in accordance with the housing counseling program handbook section 7610.1 and 24 CFR 214.

(10) "Individual" means a natural person.

(11) (a) "Loan processor or underwriter" means an individual who performs clerical or support duties at the direction of, and subject to supervision by, a state-licensed loan originator or a registered loan originator.

(b) As used in this subsection (11), "clerical or support duties" includes duties performed after receipt of an application for a residential mortgage loan, including:

(I) The receipt, collection, distribution, and analysis of information commonly used for the processing or underwriting of a residential mortgage loan; and

(II) Communicating with a borrower to obtain the information necessary to process or underwrite a loan, to the extent that the communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.

(12) "Mortgage company" means a person other than an individual who, through employees or other individuals, takes residential loan applications or offers or negotiates terms of a residential mortgage loan.

(13) "Mortgage lender" means a lender who is in the business of making residential mortgage loans if:

(a) The lender is the payee on the promissory note evidencing the loan; and

(b) The loan proceeds are obtained by the lender from its own funds or from a line of credit made available to the lender from a bank or other entity that regularly loans money to lenders for the purpose of funding mortgage loans.

(14) (a) "Mortgage loan originator" means an individual who:

(I) Takes a residential mortgage loan application; or

(II) Offers or negotiates terms of a residential mortgage loan.

(b) "Mortgage loan originator" does not include:

(I) An individual engaged solely as a loan processor or underwriter;

(II) A person that only performs real estate brokerage or sales activities and is licensed or registered pursuant to part 2 of this article 10, unless the person is compensated by a mortgage lender or a mortgage loan originator;

(III) A person solely involved in extensions of credit relating to time share plans, as defined in 11 U.S.C. sec. 101 (53D);

(IV) An individual who is servicing a mortgage loan; or

(V) A person that only performs the services and activities of a dealer, as defined in section 24-32-3302.

(15) "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed pursuant to the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008", 12 U.S.C. sec. 5101 et seq., as amended, to track the licensing and registration of mortgage loan originators and that is established and maintained by:

(a) The Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, or their successor entities; or

(b) The secretary of the United States department of housing and urban development.

(16) "Nontraditional mortgage product" means a mortgage product other than a thirty-year, fixed-rate mortgage.

(17) "Originate a mortgage" means to act, directly or indirectly, as a mortgage loan originator.

(18) "Person" means a natural person, corporation, company, limited liability company, partnership, firm, association, or other legal entity.

(19) "Quasi-government agency" means an agency that is either a private or public nonprofit organization that is exempt from taxation under section 501 (a) of the federal "Internal Revenue Code of 1986" pursuant to section 501 (c) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501 (a) and 501 (c), as amended, and was created to operate in accordance with article 4 of title 29 as a public housing authority.

(20) "Real estate brokerage activity" means an activity that involves offering or providing real estate brokerage services to the public, including, without limitation:

(a) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(b) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(c) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than matters related to financing for the transaction;

(d) Engaging in an activity for which a person engaged in the activity is required under applicable law to be registered or licensed as a real estate agent or real estate broker; or

(e) Offering to engage in any activity, or act in any capacity related to the activity, described in this subsection (20).

(21) "Residential mortgage loan" means a loan that is primarily for personal, family, or household use and that is secured by a mortgage, deed of trust, or other equivalent, consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a single-family dwelling or multiple-family dwelling of four or fewer units.

(22) "Residential real estate" means any real property upon which a dwelling is or will be constructed.

(23) "Self-help housing organization" means a private or public nonprofit organization that is exempt from taxation under section 501 (a) of the federal "Internal Revenue Code of 1986" pursuant to section 501 (c) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501 (a) and 501 (c), as amended, and that purely originates residential mortgage loans with interest rates no greater than zero percent for borrowers who have provided part of the labor to construct the dwelling securing the loan or that receives funding from the United States department of agriculture rural development section 502 mutual self-help housing program for borrowers that have provided part of the labor to construct the dwelling securing the loan.

(24) "Servicing a mortgage loan" means collecting, receiving, or obtaining the right to collect or receive payments on behalf of a mortgage lender, including payments of principal, interest, escrow amounts, and other amounts due on obligations due and owing to the mortgage lender.

(25) "State-licensed loan originator" means an individual who is:

(a) A mortgage loan originator or engages in the activities of a mortgage loan originator;

(b) Not an employee of a depository institution or a subsidiary that is:

(I) Owned and controlled by a depository institution; and

(II) Regulated by a federal banking agency;

(c) Licensed or required to be licensed pursuant to this part 7; and

(d) Registered as a state-licensed loan originator with, and maintains a unique identifier through, the nationwide mortgage licensing system and registry.

(26) "Unique identifier" means a number or other identifier assigned to a mortgage loan originator pursuant to protocols established by the nationwide mortgage licensing system and registry.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 686, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-902 as it existed prior to 2019.

12-10-703. Board of mortgage loan originators - creation - compensation - enforcement of part after board creation - immunity. (1) (a) There is hereby created in the division of real estate a board of mortgage loan originators, consisting of five members appointed by the governor with the consent of the senate.

(b) Of the members of the board:

(I) Three must be licensed mortgage loan originators. The general assembly encourages the governor to appoint to at least one of these three positions a licensed mortgage loan originator who is an employee or exclusive agent of, or works as an independent contractor for, a San Andreas-based mortgage company.

(II) Two must be members of the public at large not engaged in mortgage loan origination or mortgage lending.

(c) The term of office for a member is four years; except that the terms shall be staggered so that no more than three members' terms expire in the same year.

(d) In the event of a vacancy by death, resignation, removal, or otherwise, the governor shall appoint a member to fill the unexpired term. The governor has the authority to remove any member for misconduct, neglect of duty, or incompetence.

(2) (a) The board is a **type 1** entity, as defined in section 24-1-105, and exercises its powers and performs its duties and functions under the department.

(b) Notwithstanding any other provision of this part 7, on and after the creation of the board by this section, the board shall exercise all of the rule-making, enforcement, and administrative authority of the director set forth in this part 7. The board has the authority to delegate to the director any enforcement and administrative authority under this part 7 that the board deems necessary and appropriate. If the board delegates any enforcement or administrative authority under this part 7 to the director, the director shall only be entitled to exercise such authority as specifically delegated in writing to the director by the board.

(3) Each member of the board shall receive the same compensation and reimbursement of expenses as those provided for members of boards and commissions in the division of professions and occupations pursuant to section 12-20-103 (6). Payment for all per diem compensation and expenses shall be made out of annual appropriations from the division of real estate cash fund created in section 12-10-215.

(4) Members of the board, consultants, and expert witnesses shall be immune from suit in any civil action based upon any disciplinary proceedings or other official acts they performed in good faith pursuant to this part 7.

(5) A majority of the board shall constitute a quorum for the transaction of all business, and actions of the board shall require a vote of a majority of the members present in favor of the action taken.

(6) (a) All rules promulgated by the director prior to August 11, 2010, shall remain in full force and effect until repealed or modified by the board. The board shall have the authority to enforce any previously promulgated rules of the director under this part 7 and any rules promulgated by the board.

(b) Nothing in this section shall affect any action taken by the director prior to August 11, 2010. No person who, on or before August 11, 2010, holds a license issued under this part 7 shall be required to secure an additional license under this part 7, but shall otherwise be subject to all the provisions of this part 7. A license previously issued shall, for all purposes, be considered a license issued by the board under this part 7.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 690, § 1, effective October 1. **L. 2022:** (1)(c) amended, (SB 22-013), ch. 2, p. 12, § 11, effective February 25; (2)(a) amended, (SB 22-162), ch. 469, p. 3392, § 112, effective August 10.

Editor's note: This section is similar to former § 12-61-902.5 as it existed prior to 2019.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of San Andreas 2022.

12-10-704. License required - rules. (1) (a) Unless licensed by the board and registered with the nationwide mortgage licensing system and registry as a state-licensed loan originator, an individual shall not originate or offer to originate a mortgage or act or offer to act as a mortgage loan originator.

(b) On and after January 1, 2010, a licensed mortgage loan originator shall apply for license renewal in accordance with subsection (5) of this section every calendar year as determined by the board by rule.

(2) An independent contractor may not engage in residential mortgage loan origination activities as a loan processor or underwriter unless the independent contractor is a state-licensed loan originator.

(3) An applicant for initial licensing as a mortgage loan originator shall submit to the board the following:

(a) A criminal history record check in compliance with subsection (6) of this section;

(b) A disclosure of all administrative discipline taken against the applicant concerning the categories listed in section 12-10-711 (1)(c); and

(c) The application fee established by the board in accordance with section 12-10-718.

(4) (a) In addition to the requirements imposed by subsection (3) of this section, on or after August 5, 2009, each individual applicant for initial licensing as a mortgage loan originator must have satisfactorily completed:

(I) At least twenty hours of education as administered and approved by the Nationwide Multistate Licensing System and Registry or its successor; and

(II) A written examination approved by the board. For the portion of the examination that represents the state-specific test required in the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008", 12 U.S.C. sec. 5101 et seq., as amended, the board may adopt the uniform state test administered through the Nationwide Multistate Licensing System and Registry or its successor.

(b) The board may contract with one or more independent testing services to develop, administer, and grade the examinations required by subsection (4)(a) of this section and to maintain and administer licensee records. The contract may allow the testing service to recover from applicants its costs incurred in connection with these functions. The board may contract separately for these functions and may allow the costs to be collected by a single contractor for distribution to other contractors.

(c) The board may publish reports summarizing statistical information prepared by the nationwide mortgage licensing system and registry relating to mortgage loan originator examinations.

(5) An applicant for license renewal shall submit to the board the following:

(a) A disclosure of all administrative discipline taken against the applicant concerning the categories listed in section 12-10-711 (1)(c); and

(b) The renewal fee established by the board in accordance with section 12-10-718.

(6) (a) Prior to submitting an application for a license, an applicant shall submit a set of fingerprints to the San Andreas bureau of investigation. Upon receipt of the applicant's fingerprints, the San Andreas bureau of investigation shall use the fingerprints to conduct a state and national criminal history record check using records of the San Andreas bureau of investigation and the federal bureau of investigation. All costs arising from the fingerprint-based criminal history record check must be borne by the applicant and must be paid when the set of fingerprints is submitted. Upon completion of the fingerprint-based criminal history record check, the bureau shall forward the results to the board. The board shall acquire a name-based judicial record check, as defined in section 22-2-119.3 (6)(d), for an applicant who has a record of arrest without a disposition. The applicant shall pay the costs associated with a name-based judicial record check.

(b) If the board determines that the criminal background check provided by the nationwide mortgage licensing system and registry is a sufficient method of screening license applicants to protect San Andreas consumers, the board may, by rule, authorize the use of that criminal background check instead of the criminal history record check otherwise required by this subsection (6).

(7) (a) On and after January 1, 2010, in connection with an application for a license as a mortgage loan originator, the applicant shall furnish information concerning the applicant's identity to the nationwide mortgage licensing system and registry. The applicant shall furnish, at a minimum, the following:

(I) Fingerprints for submission to the federal bureau of investigation and any government agency or entity authorized to receive fingerprints for a state, national, or international criminal history record check; and

(II) Personal history and experience, in a form prescribed by the nationwide mortgage licensing system and registry, including submission of authorization for the nationwide mortgage licensing system and registry to obtain:

(A) An independent credit report from the consumer reporting agency described in the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681a (p); and

(B) Information related to any administrative, civil, or criminal findings by a government jurisdiction.

(b) An applicant is responsible for paying all costs arising from a criminal history record check and shall pay the costs upon submission of fingerprints.

(c) The board shall acquire a name-based judicial record check, as defined in section 22-2-119.3 (6)(d), for an applicant who has a record of arrest without a disposition. The applicant shall pay the costs associated with a name-based judicial record check.

(8) Before granting a license to an applicant, the board shall require the applicant to post a bond as required by section 12-10-717.

(9) The board shall issue or deny a license within sixty days after:

(a) The applicant has submitted the requisite information to the board and the Nationwide Multistate Licensing System and Registry, including the completed application and any necessary supplementary information, the application fee, and proof that the applicant has posted a surety bond and obtained errors and omissions insurance; and

(b) The board receives the completed criminal history record check and all other relevant information or documents necessary to reasonably ascertain facts underlying the applicant's criminal history.

(10) (a) The board may require, as a condition of license renewal on or after January 1, 2009, continuing education of licensees for the purpose of enhancing the professional competence and professional responsibility of all licensees.

(b) Continuing professional education requirements shall be determined by the board by rule; except that licensees shall be required to complete at least eight credit hours of continuing education each year. The board may contract with one or more independent service providers to develop, review, or approve continuing education courses. The contract may allow the independent service provider to recover from licensees its costs incurred in connection with these functions. The board may contract separately for these functions and may allow the costs to be collected by a single contractor for distribution to other contractors.

(11) (a) The board may require contractors and prospective contractors for services under subsections (4) and (10) of this section to submit, for the board's review and approval, information regarding the contents and materials of proposed courses and other documentation reasonably necessary to further the purposes of this section.

(b) The board may set fees for the initial and continuing review of courses for which credit hours will be granted. The initial filing fee for review of materials shall not exceed five hundred dollars, and the fee for continued review shall not exceed two hundred fifty dollars per year per course offered.

(12) The board may adopt reasonable rules to implement this section. The board may adopt rules necessary to implement provisions required in the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008", 12 U.S.C. sec. 5101 et seq., as amended, and for participation in the nationwide mortgage licensing system and registry.

(13) In order to fulfill the purposes of this part 7, the board may establish relationships or contracts with the nationwide mortgage licensing system and registry or other entities designated by the nationwide mortgage licensing system and registry to collect and maintain

records and process transaction fees or other fees related to licensees or other persons subject to this part 7.

(14) The board may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from or distributing information to the department of justice, a government agency, or any other source.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 691, § 1, effective October 1; (6)(a) and (7)(c) amended, (HB 19-1166), ch. 125, p. 566, § 72, effective October 1. **L. 2022:** (6)(a) and (7)(c) amended, (HB 22-1270), ch. 114, p. 516, § 13, effective April 21.

Editor's note: (1) This section is similar to former § 12-61-903 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in HB 19-1166. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from April 18, 2019, to October 1, 2019, see HB 19-1166, chapter 125, Session Laws of San Andreas 2019.

12-10-705. Registration required - rules. (1) On or after January 1, 2011, each mortgage company shall register with the nationwide mortgage licensing system and registry, unless exempted by rule by the board, and shall renew its registration each calendar year based on the following criteria:

(a) (I) The mortgage company is legally operating in the state of San Andreas in accordance with standards determined and administered by the San Andreas secretary of state; and

(II) The mortgage company is not legally barred from operating in San Andreas.

(b) Sole proprietors, general partnerships, and other mortgage companies not otherwise required to register with the secretary of state shall register using a trade name.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 694, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-903.1 as it existed prior to 2019.

12-10-706. License or registration inactivation. (1) The board may inactivate a state license or a registration with the nationwide mortgage licensing system and registry when a licensee has failed to:

(a) Comply with the surety bond requirements of sections 12-10-704 (8) and 12-10-717;

(b) Comply with the errors and omissions insurance requirement in section 12-10-707 or any rule of the board that directly or indirectly addresses errors and omissions insurance requirements;

(c) Maintain current contact information, surety bond information, or errors and omissions insurance information as required by this part 7 or by any rule of the board that directly or indirectly addresses those requirements;

(d) Respond to an investigation or examination;

(e) Comply with any of the education or testing requirements set forth in this part 7 or in any rule of the board that directly or indirectly addresses education or testing requirements; or

(f) Register with and provide all required information to the nationwide mortgage licensing system and registry.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 694, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-903.3 as it existed prior to 2019.

12-10-707. Errors and omissions insurance - duties of the board - certificate of coverage - when required - group plan made available - effect - rules. (1) Every licensee under this part 7, except an inactive mortgage loan originator or an attorney licensee who maintains a policy of professional malpractice insurance that provides coverage for errors and omissions insurance for their activities as a licensee under this part 7, shall maintain errors and omissions insurance to cover all activities contemplated under this part 7. The division shall make the errors and omissions insurance available to all licensees by contracting with an insurer for a group policy after a competitive bid process in accordance with article 103 of title 24. A group policy obtained by the division must be available to all licensees with no right on the part of the insurer to cancel a licensee. A licensee may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the division.

(2) (a) If the division is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the group program at a reasonable annual premium, as determined by the division, a licensee shall independently obtain the errors and omissions insurance required by this section.

(b) The division shall solicit and consider information and comments from interested persons when determining the reasonableness of annual premiums.

(3) The division shall determine the terms and conditions of coverage required under this section based on rules promulgated by the board. Each licensee shall be notified of the required terms and conditions at least thirty days before the annual premium renewal date as determined by the division. Each licensee shall file a certificate of coverage showing compliance with the required terms and conditions with the division by the annual premium renewal date, as determined by the division.

(4) In addition to all other powers and duties conferred upon the board by this part 7, the board shall adopt such rules as it deems necessary or proper to carry out this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 695, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-903.5 as it existed prior to 2019.

12-10-708. License renewal. (1) In order for a licensed mortgage loan originator to renew a license issued pursuant to this part 7, the mortgage loan originator shall:

(a) Continue to meet the minimum standards for issuance of a license pursuant to this part 7;

(b) Satisfy the annual continuing education requirements set forth in section 12-10-704 (10) and in rules adopted by the board; and

(c) Pay applicable license renewal fees.

(2) If a licensed mortgage loan originator fails to satisfy the requirements of subsection (1) of this section for license renewal, the mortgage loan originator's license shall expire. The board shall adopt rules to establish procedures for the reinstatement of an expired license consistent with the standards established by the nationwide mortgage licensing system and registry.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 696, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-903.7 as it existed prior to 2019.

12-10-709. Exemptions - definition - rules. (1) Except as otherwise provided in section 12-10-713, this part 7 does not apply to the following, unless otherwise determined by the federal bureau of consumer financial protection or the United States department of housing and urban development:

(a) With respect to a residential mortgage loan:

(I) A person, estate, or trust that provides mortgage financing for the sale of no more than three properties in any twelve-month period to purchasers of the properties, each of which is owned by the person, estate, or trust and serves as security for the loan; or

(II) An individual who acts as a mortgage loan originator, without compensation or gain to the mortgage loan originator, in providing loan financing for not more than three residential mortgage loans in any twelve-month period to a family member of the individual. The board shall define "family member" by rule. For purposes of this exemption only, "compensation or gain" excludes any interest paid under the loan financing provided.

(b) A bank and a savings association as these terms are defined in the "Federal Deposit Insurance Act", 12 U.S.C. sec. 1811 et seq., as amended, a subsidiary that is owned and controlled by a bank or savings association, employees of a bank or savings association, employees of a subsidiary that is owned and controlled by a bank or savings association, credit unions, and employees of credit unions;

(c) An attorney who renders services in the course of practice, who is licensed in San Andreas, and who is not primarily engaged in the business of negotiating residential mortgage loans;

(d) A person who:

(I) Funds a residential mortgage loan that has been originated and processed by a licensed person or by an exempt person;

(II) Does not solicit borrowers in San Andreas for the purpose of making residential mortgage loans; and

(III) Does not participate in the negotiation of residential mortgage loans with the borrower, except for setting the terms under which a person may buy or fund a residential mortgage loan originated by a licensed or exempt person;

(e) A loan processor or underwriter who is not an independent contractor and who does not represent to the public that the individual can or will perform any activities of a mortgage loan originator. As used in this subsection (1)(e), "represent to the public" means communicating, through advertising or other means of communicating, or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual is able to provide a particular service or activity for a consumer.

(f) To the extent that it is providing programs benefitting affordable housing dwelling units, an agency of the federal government, the San Andreas government, or any of San Andreas's political subdivisions or employees of an agency of the federal government, of the San Andreas government, or of any of San Andreas's political subdivisions;

(g) Quasi-government agencies, HUD-approved housing counseling agencies, or employees of quasi-government agencies or HUD-approved housing counseling agencies;

(h) Community development organizations or employees of community development organizations;

(i) Self-help housing organizations or employees of self-help housing organizations or volunteers acting as an agent of self-help housing organizations;

(j) A person licensed under part 2 of this article 10 who represents a person, estate, or trust providing mortgage financing under subsection (1)(a) of this section.

(2) The exemptions in subsection (1) of this section shall not apply to persons acting beyond the scope of the exemptions.

(3) The board may adopt reasonable rules modifying the exemptions in this section in accordance with rules adopted by the federal bureau of consumer financial protection or the United States department of housing and urban development.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 696, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-904 as it existed prior to 2019.

12-10-710. Originator's relationship to borrower - rules. (1) A mortgage loan originator shall have a duty of good faith and fair dealing in all communications and transactions with a borrower. The duty includes, but is not limited to:

(a) The duty to not recommend or induce the borrower to enter into a transaction that does not have a reasonable, tangible net benefit to the borrower, considering all of the circumstances, including the terms of a loan, the cost of a loan, and the borrower's circumstances;

(b) The duty to make a reasonable inquiry concerning the borrower's current and prospective income, existing debts and other obligations, and any other relevant information and, after making the inquiry, to make his or her best efforts to recommend, broker, or originate a residential mortgage loan that takes into consideration the information submitted by the borrower, but the mortgage loan originator shall not be deemed to violate this section if the borrower conceals or misrepresents relevant information; and

(c) The duty not to commit any acts, practices, or omissions in violation of section 38-40-105.

(2) For purposes of implementing subsection (1) of this section, the board may adopt rules defining what constitutes a reasonable, tangible net benefit to the borrower.

(3) A violation of this section constitutes a deceptive trade practice under the "San Andreas Consumer Protection Act", article 1 of title 6.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 698, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-904.5 as it existed prior to 2019.

12-10-711. Powers and duties of the board - rules. (1) The board may deny an application for a license, refuse to renew, or revoke the license of an applicant or licensee who has:

(a) Filed an application with the board containing material misstatements of fact or omitted any disclosure required by this part 7;

(b) Within the last five years, been convicted of or pled guilty or nolo contendere to a crime involving fraud, deceit, material misrepresentation, theft, or the breach of a fiduciary duty, except as otherwise set forth in this part 7;

(c) Except as otherwise set forth in this part 7, within the last five years, had a license, registration, or certification issued by San Andreas or another state revoked or suspended for fraud, deceit, material misrepresentation, theft, or the breach of a fiduciary duty, and the discipline denied the person authorization to practice as:

(I) A mortgage broker or a mortgage loan originator;

(II) A real estate broker, as defined by section 12-10-201 (6);

(III) A real estate salesperson;

(IV) A real estate appraiser, as defined by section 12-10-602 (9);

(V) An insurance producer, as defined by section 10-2-103 (6);

(VI) An attorney;

(VII) A securities broker-dealer, as defined by section 11-51-201 (2);

(VIII) A securities sales representative, as defined by section 11-51-201 (14);

(IX) An investment advisor, as defined by section 11-51-201 (9.5); or

(X) An investment advisor representative, as defined by section 11-51-201 (9.6);

(d) Been enjoined within the immediately preceding five years under the laws of this or any other state or of the United States from engaging in deceptive conduct relating to the brokering of or originating a mortgage loan;

(e) Been found to have violated the provisions of section 12-10-721;

(f) Been found to have violated the provisions of section 12-10-713;

(g) Not demonstrated financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the individual will operate honestly, fairly, and efficiently, consistent with the purposes of this part 7;

(h) Not completed the prelicense education requirements set forth in section 12-10-704 and any applicable rules of the board; or

(i) Not passed a written examination that meets the requirements set forth in section 12-10-704 and any applicable rules of the board.

(2) The board shall deny an application for a license, refuse to renew, or revoke the license of an applicant or licensee who has:

(a) (I) Had a mortgage loan originator license or similar license revoked in any jurisdiction.

(II) If a revocation is subsequently formally nullified, the license is not revoked for purposes of this subsection (2)(a).

(b) (I) At any time been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering.

(II) If the individual obtains a pardon of the conviction, the board shall not deem the individual convicted for purposes of this subsection (2)(b).

(c) Been convicted of, or pled guilty or nolo contendere to, a felony within the immediately preceding seven years.

(3) The board may investigate the activities of a licensee or other person that present grounds for disciplinary action under this part 7 or that violate section 12-10-720 (1).

(4) (a) If the board has reasonable grounds to believe that a mortgage loan originator is no longer qualified under subsection (1) of this section, the board may summarily suspend the mortgage loan originator's license pending a hearing to revoke the license. A summary suspension shall conform to article 4 of title 24.

(b) The board shall suspend the license of a mortgage loan originator who fails to maintain the bond required by section 12-10-717 until the licensee complies with that section.

(5) The board or an administrative law judge appointed pursuant to part 10 of article 30 of title 24 shall conduct disciplinary hearings concerning mortgage loan originators and mortgage companies. The hearings shall conform to article 4 of title 24.

(6) (a) Except as provided in subsection (6)(b) of this section, an individual whose license has been revoked shall not be eligible for licensure for two years after the effective date of the revocation.

(b) If the board or an administrative law judge determines that an application contained a misstatement of fact or omitted a required disclosure due to an unintentional error, the board shall allow the applicant to correct the application. Upon receipt of the corrected and completed application, the board or administrative law judge shall not bar the applicant from being licensed on the basis of the unintentional misstatement or omission.

(7) (a) The board or an administrative law judge may administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing or investigation conducted by the board or an administrative law judge. The board may request any information relevant to the investigation, including, but not limited to, independent credit reports obtained from a consumer reporting agency described in the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681a (p).

(b) Upon failure of a witness to comply with a subpoena or process, the district court of the county in which the subpoenaed witness resides or conducts business may issue an order requiring the witness to appear before the board or administrative law judge; produce the relevant papers, books, records, documentary evidence, testimony, or materials in question; or both. Failure to obey the order of the court may be punished as a contempt of court. The board or an administrative law judge may apply for an order.

(c) The licensee or individual who, after an investigation under this part 7, is found to be in violation of a provision of this part 7 shall be responsible for paying all reasonable and necessary costs of the division arising from subpoenas or requests issued pursuant to this subsection (7), including court costs for an action brought pursuant to subsection (7)(b) of this section.

(8) (a) If the board has reasonable cause to believe that an individual is violating this part 7, including but not limited to section 12-10-720 (1), the board may enter an order requiring the individual to cease and desist the violations.

(b) The board, upon its own motion, may, and, upon the complaint in writing of any person, shall, investigate the activities of any licensee or any individual who assumes to act in such capacity within the state. In addition to any other penalty that may be imposed pursuant to this part 7, any individual violating any provision of this part 7 or any rules promulgated pursuant to this article 10 may be fined upon a finding of misconduct by the board as follows:

(I) In the first administrative proceeding, a fine not in excess of one thousand dollars per act or occurrence;

(II) In a second or subsequent administrative proceeding, a fine not less than one thousand dollars nor in excess of two thousand dollars per act or occurrence.

(c) All fines collected pursuant to this subsection (8) shall be transferred to the state treasurer, who shall credit them to the division of real estate cash fund created in section 12-10-215.

(9) The board shall keep records of the individuals licensed as mortgage loan originators and of disciplinary proceedings. The records kept by the board shall be open to public inspection in a reasonable time and manner determined by the board.

(10) The board shall maintain a system, which may include, without limitation, a hotline or website, that gives consumers a reasonably easy method for making complaints about a mortgage loan originator.

(11) The board shall promulgate rules to allow licensed mortgage loan originators to hire unlicensed mortgage loan originators under temporary licenses. If an unlicensed mortgage loan originator has initiated the application process for a license, he or she shall be assigned a temporary license for a reasonable period until a license is approved or denied. The licensed mortgage loan originator who employs an unlicensed mortgage loan originator shall be held responsible under all applicable provisions of law, including without limitation this part 7 and section 38-40-105, for the actions of the unlicensed mortgage loan originator to whom a temporary license has been assigned under this subsection (11).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 698, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-905 as it existed prior to 2019.

12-10-712. Powers and duties of the board over mortgage companies - fines - rules. (1) With respect to mortgage companies, the board may deny an application for registration; refuse to renew, suspend, or revoke the registration; enter cease-and-desist orders; and impose fines as set forth in this section as follows:

(a) If the board has reasonable cause to believe a person is acting without a license or registration;

(b) If the mortgage company fails to maintain possession, for future use or inspection by an authorized representative of the board, for a period of four years, of the documents or records prescribed by the rules of the board or to produce the documents or records upon reasonable request by the board or by an authorized representative of the board;

(c) If the mortgage company employs or contracts with individuals who are required to be licensed pursuant to this part 7 and who are not either:

(I) Licensed; or

(II) In the process of becoming licensed; or

(d) If the mortgage company directs, makes, or causes to be made, in any manner, a false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan; engages in bait and switch advertising as that term is used in section 6-1-105 (1)(n); or violates any rule of the board that directly or indirectly addresses advertising requirements.

(2) (a) The board, upon its own motion or upon the complaint in writing of any person, may investigate the activities of any registered mortgage company or any mortgage company that is acting in a capacity that requires registration pursuant to this part 7.

(b) The board may fine a mortgage company that has violated this section or any rules promulgated pursuant to this section as follows:

(I) In the first administrative proceeding, a fine not in excess of one thousand dollars per act or occurrence;

(II) In a second or subsequent administrative proceeding, a fine not in excess of two thousand dollars per act or occurrence.

(c) All fines collected pursuant to this section shall be transmitted to the state treasurer, who shall credit them to the division of real estate cash fund created in section 12-10-215.

(3) The board may adopt reasonable rules for implementing this section.

(4) Nothing in this section automatically imputes a violation to the mortgage company if a licensed agent or employee, or an individual agent or employee who is required to be licensed, violates any other provision of this part 7.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 702, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-905.1 as it existed prior to 2019.

12-10-713. Disciplinary actions - grounds - procedures - rules. (1) The board, upon its own motion, may, or upon the complaint in writing of any person, shall, investigate the activities of any mortgage loan originator. The board has the power to impose an administrative fine in accordance with section 12-10-711, deny a license, censure a licensee, place the licensee on probation and set the terms of probation, order restitution, order the payment of actual damages, or suspend or revoke a license when the board finds that the licensee or applicant has performed, is performing, or is attempting to perform any of the following acts:

(a) Knowingly making any misrepresentation or knowingly making use of any false or misleading advertising;

(b) Making any promise that influences, persuades, or induces another person to detrimentally rely on the promise when the licensee could not or did not intend to keep the promise;

(c) Knowingly misrepresenting or making false promises through agents, salespersons, advertising, or otherwise;

(d) Violating any provision of the "San Andreas Consumer Protection Act", article 1 of title 6, and, if the licensee has been assessed a civil or criminal penalty or been subject to an injunction under the act, the board shall revoke the licensee's license;

(e) Acting for more than one party in a transaction without disclosing any actual or potential conflict of interest or without disclosing to all parties any fiduciary obligation or other legal obligation of the mortgage loan originator to any party;

(f) Representing or attempting to represent a mortgage loan originator other than the licensee's principal or employer without the express knowledge and consent of that principal or employer;

(g) In the case of a licensee in the employ of another mortgage loan originator, failing to place, as soon after receipt as is practicably possible, in the custody of that licensed mortgage loan originator-employer any deposit money or other money or fund entrusted to the employee by any person dealing with the employee as the representative of that licensed mortgage loan originator-employer;

(h) Failing to account for or to remit, within a reasonable time, any money coming into his or her possession that belongs to others, whether acting as a mortgage loan originator, real estate broker, salesperson, or otherwise, and failing to keep records relative to the money, which records shall contain such information as may be prescribed by the rules of the board relative thereto and shall be subject to audit by the board;

(i) Converting funds of others, diverting funds of others without proper authorization, commingling funds of others with the licensee's own funds, or failing to keep the funds of others in an escrow or a trustee account with a bank or recognized depository in this state, which account may be any type of checking, demand, passbook, or statement account insured by an agency of the United States government, and to keep records relative to the deposit that contain such information as may be prescribed by the rules of the board relative thereto, which records shall be subject to audit by the board;

(j) Failing to provide the parties to a residential mortgage loan transaction with such information as may be prescribed by the rules of the board;

(k) Unless an employee of a duly registered mortgage company, failing to maintain possession, for future use or inspection by an authorized representative of the board, for a period of four years, of the documents or records prescribed by the rules of the board or to produce the documents or records upon reasonable request by the board or by an authorized representative of the board;

(l) Paying a commission or valuable consideration for performing any of the functions of a mortgage loan originator, as described in this part 7, to any person who is not licensed under this part 7 or is not registered in compliance with the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008", 12 U.S.C. sec. 5101 et seq., as amended;

(m) Disregarding or violating any provision of this part 7 or any rule adopted by the board pursuant to this part 7; violating any lawful orders of the board; or aiding and abetting a violation of any rule, order of the board, or provision of this part 7;

(n) Conviction of, entering a plea of guilty to, or entering a plea of nolo contendere to any crime in article 3 of title 18, parts 1 to 4 of article 4 of title 18, article 5 of title 18, part 3 of article 8 of title 18, article 15 of title 18, article 17 of title 18, or any other like crime under San Andreas law, federal law, or the laws of other states. A certified copy of the judgment of a court of competent jurisdiction of a conviction or other official record indicating that a plea was entered shall be conclusive evidence of the conviction or plea in any hearing under this part 7.

(o) Violating or aiding and abetting in the violation of the San Andreas or federal fair housing laws;

(p) Failing to immediately notify the board in writing of a conviction, plea, or violation pursuant to subsection (1)(n) or (1)(o) of this section;

(q) Having demonstrated unworthiness or incompetency to act as a mortgage loan originator by conducting business in such a manner as to endanger the interest of the public;

(r) Procuring, or attempting to procure, a mortgage loan originator's license or renewing, reinstating, or reactivating, or attempting to renew, reinstate, or reactivate, a mortgage loan originator's license by fraud, misrepresentation, or deceit or by making a material misstatement of fact in an application for the license;

(s) Claiming, arranging for, or taking any secret or undisclosed amount of compensation, commission, or profit or failing to reveal to the licensee's principal or employer the full amount of the licensee's compensation, commission, or profit in connection with any acts for which a license is required under this part 7;

(t) Exercising an option to purchase in any agreement authorizing or employing a licensee to sell, buy, or exchange real estate for compensation or commission except when the licensee, prior to or coincident with election to exercise the option to purchase, reveals in writing to the licensee's principal or employer the full amount of the licensee's profit and obtains the written consent of the principal or employer approving the amount of the profit;

(u) Fraud, misrepresentation, deceit, or conversion of trust funds that results in the payment of any claim pursuant to this part 7 or that results in the entry of a civil judgment for damages;

(v) Any other conduct, whether of the same or a different character than specified in this subsection (1), that evinces a lack of good faith and fair dealing;

(w) Having had a mortgage loan originator's license suspended or revoked in any jurisdiction or having had any disciplinary action taken against the mortgage loan originator in any other jurisdiction. A certified copy of the order of disciplinary action shall be prima facie evidence of the disciplinary action.

(x) Engaging in any unfair or deceptive practice toward any person;

(y) Obtaining property by fraud or misrepresentation;

(z) Soliciting or entering into a contract with a borrower that provides, in substance, that the mortgage loan originator may earn a fee or commission through the mortgage loan originator's best efforts to obtain a loan even though no loan is actually obtained for the borrower;

(aa) Soliciting, advertising, or entering into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of the solicitation, advertisement, or contract;

(bb) Failing to make a disclosure to a loan applicant or a noninstitutional investor as required by section 12-10-725 and any other applicable state or federal law;

(cc) Making, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engaging in bait and switch advertising;

(dd) Negligently making any false statement or knowingly and willfully omitting a material fact in connection with any reports filed by a mortgage loan originator or in connection with any investigation conducted by the division;

(ee) In any advertising of residential mortgage loans or any other applicable mortgage loan originator activities covered by the following federal acts, failing to comply with any requirement of the "Truth in Lending Act", 15 U.S.C. sec. 1601 and Regulation Z, 12 CFR 226 and 12 CFR 1026; the "Real Estate Settlement Procedures Act of 1974", 12 U.S.C. sec. 2601 and Regulation X, 12 CFR 1024 et seq.; the "Equal Credit Opportunity Act", 15 U.S.C. sec. 1691 and Regulation B, 12 CFR 202.9, 202.11, and 202.12 and 12 CFR 1002; Title V, Subtitle A of the "Financial Services Modernization Act of 1999", also known as the "Gramm-Leach-Bliley Act", 15 U.S.C. secs. 6801 to 6809, and the federal trade commission's privacy rules, 16 CFR 313 and 314, mandated by the "Gramm-Leach-Bliley Act"; the "Home Mortgage Disclosure Act of 1975", 12 U.S.C. sec. 2801 et seq. and Regulation C, home mortgage disclosure, 12 CFR 203 and 12 CFR 1003; the "Federal Trade Commission Act" of 1914, 15 U.S.C. sec. 45 (a) and 16 CFR 233; and the "Telemarketing and Consumer Fraud and Abuse Prevention Act", 15 U.S.C. secs. 6101 to 6108, and the federal trade commission's telemarketing sales rule, 16 CFR 310, as amended. The board may adopt rules requiring mortgage loan originators to comply with other applicable state and federal statutes and regulations.

(ff) Failing to pay a third-party provider, no later than thirty days after the recording of the loan closing documents or ninety days after completion of the third-party service, whichever comes first, unless otherwise agreed or unless the third-party service provider has been notified in writing that a bona fide dispute exists regarding the performance or quality of the third-party service; or

(gg) Collecting, charging, attempting to collect or charge, or using or proposing any agreement purporting to collect or charge any fee prohibited by section 12-10-725 or 12-10-726.

(2) Upon request of the board, when any mortgage loan originator is a party to any suit or proceeding, either civil or criminal, arising out of any transaction involving a residential mortgage loan and the mortgage loan originator participated in the transaction in his or her capacity as a licensed mortgage loan originator, the mortgage loan originator shall supply to the board a copy of the complaint, indictment, information, or other initiating pleading and the answer filed, if any, and advise the board of the disposition of the case and of the nature and amount of any judgment, verdict, finding, or sentence that may be made, entered, or imposed therein.

(3) This part 7 shall not be construed to relieve any person from civil liability or criminal prosecution under the laws of this state.

(4) Complaints of record in the office of the board and board investigations, including board investigative files, are closed to public inspection. Stipulations and final agency orders are public record and subject to sections 24-72-203 and 24-72-204.

(5) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, the board may send a letter of admonition by certified mail, return receipt requested, to the licensee against whom a complaint was made and a copy of the

letter of admonition to the person making the complaint, but the letter shall advise the licensee that the licensee has the right to request in writing, within twenty days after proven receipt, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based. If the request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be processed by means of formal disciplinary proceedings.

(6) All administrative fines collected pursuant to this section shall be transmitted to the state treasurer, who shall credit them to the division of real estate cash fund created in section 12-10-215.

(7) (a) The board shall not consider an application for licensure from an individual whose license has been revoked until two years after the date of revocation.

(b) If an individual's license was suspended or revoked due to conduct that resulted in financial loss to another person, no new license shall be granted, nor shall a suspended license be reinstated, until full restitution has been made to the person suffering the financial loss. The amount of restitution shall include interest, reasonable attorney fees, and costs of any suit or other proceeding undertaken in an effort to recover the loss.

(8) When the board or the division becomes aware of facts or circumstances that fall within the jurisdiction of a criminal justice or other law enforcement authority upon investigation of the activities of a licensee, the board or division shall, in addition to the exercise of its authority under this part 7, refer and transmit the information, which may include originals or copies of documents and materials, to one or more criminal justice or other law enforcement authorities for investigation and prosecution as authorized by law.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 703, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-905.5 as it existed prior to 2019.

12-10-714. Hearing - administrative law judge - review - rules. (1) Except as otherwise provided in this section, all proceedings before the board with respect to disciplinary actions and denial of licensure under this part 7, at the discretion of the board, may be conducted by an authorized representative of the board or an administrative law judge pursuant to sections 24-4-104 and 24-4-105.

(2) Proceedings shall be held in the county where the board has its office or in such other place as the board may designate. If the licensee is employed by another licensed mortgage loan originator or by a real estate broker, the board shall also notify the licensee's employer by mailing, by first-class mail, a copy of the written notice required under section 24-4-104 (3) to the employer's last-known business address.

(3) The board, an authorized representative of the board, or an administrative law judge shall conduct all hearings for denying, suspending, or revoking a license or certificate on behalf of the board, subject to appropriations made to the department of personnel. Each administrative law judge shall be appointed pursuant to part 10 of article 30 of title 24. The administrative law judge shall conduct the hearing in accordance with sections 24-4-104 and 24-4-105. No license shall be denied, suspended, or revoked until the board has made its decision.

(4) The decision of the board in any disciplinary action or denial of licensure under this section is subject to judicial review by the court of appeals. In order to effectuate the purposes of this part 7, the board has the power to promulgate rules pursuant to article 4 of title 24.

(5) In a judicial review proceeding, the court may stay the execution or effect of any final order of the board; but a hearing shall be held affording the parties an opportunity to be heard for the purpose of determining whether the public health, safety, and welfare would be endangered by staying the board's order. If the court determines that the order should be stayed, it shall also determine at the hearing the amount of the bond and adequacy of the surety, which bond shall be conditioned upon the faithful performance by the petitioner of all obligations as a mortgage loan originator and upon the prompt payment of all damages arising from or caused by the delay in the taking effect of or enforcement of the order complained of and for all costs that may be assessed or required to be paid in connection with the proceedings.

(6) In any hearing conducted by the board or an authorized representative of the board in which there is a possibility of the denial, suspension, or revocation of a license because of the conviction of a felony or of a crime involving moral turpitude, the board or its authorized representative shall be governed by section 24-5-101.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 707, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-905.6 as it existed prior to 2019.

12-10-715. Subpoena - petty offense. (1) The board or the administrative law judge appointed for hearings may issue subpoenas, as described in section 12-10-711 (7), which shall be served in the same manner as subpoenas issued by district courts and shall be issued without discrimination between public or private parties requiring the attendance of witnesses or the production of documents at hearings.

(2) Any person who willfully fails or neglects to appear and testify or to produce books, papers, or records required by subpoena, duly served upon him or her in any matter conducted under this part 7, commits a petty offense. Each day a person so refuses or neglects constitutes a separate offense.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 708, § 1, effective October 1. **L. 2021:** (2) amended, (SB 21-271), ch. 462, p. 3154, § 138, effective March 1, 2022.

Editor's note: This section is similar to former § 12-61-905.7 as it existed prior to 2019.

12-10-716. Immunity. A person participating in good faith in the filing of a complaint or report or participating in an investigation or hearing before the board or an administrative law judge pursuant to this part 7 shall be immune from any liability, civil or criminal, that otherwise might result by reason of the action.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 708, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-906 as it existed prior to 2019.

12-10-717. Bond required - rules. (1) Before receiving a license, an applicant shall post with the board a surety bond in an amount prescribed by the board by rule. A licensed mortgage loan originator shall maintain the required bond at all times. The surety bond may be held by the individual mortgage loan originator or may be in the name of the company by which the mortgage loan originator is employed. The board may adopt rules to further define surety bond requirements.

(2) The surety shall not be required to pay a person making a claim upon the bond until a final determination of fraud, forgery, criminal impersonation, or fraudulent representation has been made by a court with jurisdiction.

(3) The surety bond shall require the surety to provide notice to the board within thirty days if payment is made from the surety bond or if the bond is canceled.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 709, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-907 as it existed prior to 2019.

12-10-718. Fees. The board may set the fees for issuance and renewal of licenses and registrations under this part 7. The fees shall be set in amounts that offset the direct and indirect costs of implementing this part 7 and section 38-40-105. The money collected pursuant to this section shall be transferred to the state treasurer, who shall credit it to the division of real estate cash fund created in section 12-10-215.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 709, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-908 as it existed prior to 2019.

12-10-719. Attorney general - district attorney - jurisdiction. The attorney general shall have concurrent jurisdiction with the district attorneys of this state to investigate and prosecute allegations of criminal violations of this part 7.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 709, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-909 as it existed prior to 2019.

12-10-720. Violations - injunctions. (1) (a) Any individual violating this part 7 by acting as a mortgage loan originator in this state without having obtained a license or by acting as a mortgage loan originator after that individual's license has been revoked or during any period for which the license may have been suspended commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501; except that, if the violator is not a natural person, the violator shall be punished by a fine of not more than five thousand dollars.

(b) Each residential mortgage loan negotiated or offered to be negotiated by an unlicensed person shall be a separate violation of this subsection (1).

(2) The board may request that an action be brought in the name of the people of the state of San Andreas by the attorney general or the district attorney of the district in which the violation is alleged to have occurred to enjoin a person from engaging in or continuing the violation or from doing any act that furthers the violation. In such an action, an order or judgment may be entered awarding the preliminary or final injunction as is deemed proper by the court. The notice, hearing, or duration of an injunction or restraining order shall be made in accordance with the San Andreas rules of civil procedure.

(3) A violation of this part 7 shall not affect the validity or enforceability of any mortgage.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 709, § 1, effective October 1. **L. 2021:** (1)(a) amended, (SB 21-271), ch. 462, p. 3154, § 139, effective March 1, 2022.

Editor's note: This section is similar to former § 12-61-910 as it existed prior to 2019.

12-10-721. Prohibited conduct - influencing a real estate appraisal. (1) A mortgage loan originator shall not, directly or indirectly, compensate, coerce, or intimidate an appraiser, or attempt, directly or indirectly, to compensate, coerce, or intimidate an appraiser, for the purpose of influencing the independent judgment of the appraiser with respect to the value of a dwelling offered as security for repayment of a residential mortgage loan. This prohibition shall not be construed as prohibiting a mortgage loan originator from requesting an appraiser to:

(a) Consider additional, appropriate property information;

(b) Provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(c) Correct errors in the appraisal report.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 710, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-910.2 as it existed prior to 2019.

12-10-722. Rule-making authority. The board has the authority to promulgate rules as necessary to enable the board to carry out the board's duties under this part 7.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 710, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-910.3 as it existed prior to 2019.

12-10-723. Acts of employee - mortgage loan originator's liability. An unlawful act or violation of this part 7 upon the part of an agent or employee of a licensed mortgage loan originator shall not be cause for disciplinary action against a mortgage loan originator unless it

appears that the mortgage loan originator knew or should have known of the unlawful act or violation or had been negligent in the supervision of the agent or employee.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 710, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-911.5 as it existed prior to 2019.

12-10-724. Dual status as real estate broker - requirements. (1) Unless a mortgage loan originator complies with both subsections (2) and (3) of this section, he or she shall not act as a mortgage loan originator in any transaction in which:

(a) The mortgage loan originator acts or has acted as a real estate broker or salesperson; or

(b) Another person doing business under the same licensed real estate broker acts or has acted as a real estate broker or salesperson.

(2) Before providing mortgage-related services to the borrower, a mortgage loan originator shall make a full and fair disclosure to the borrower, in addition to any other disclosures required by this part 7 or other laws, of all material features of the loan product and all facts material to the transaction.

(3) (a) A real estate broker or salesperson licensed under part 2 of this article 10 who also acts as a mortgage loan originator shall carry on the mortgage loan originator business activities and shall maintain the person's mortgage loan originator business records separate and apart from the real estate broker or sales activities conducted pursuant to part 2 of this article 10. The activities shall be deemed separate and apart even if they are conducted at an office location with a common entrance and mailing address if:

(I) Each business is clearly identified by a sign visible to the public;

(II) Each business is physically separated within the office facility; and

(III) No deception of the public as to the separate identities of the broker business firms results.

(b) This subsection (3) shall not require a real estate broker or salesperson licensed under part 2 of this article 10 who also acts as a mortgage loan originator to maintain a physical separation within the office facility for the conduct of its real estate broker or sales and mortgage loan originator activities if the board determines that maintaining the physical separation would constitute an undue financial hardship upon the mortgage loan originator and is unnecessary for the protection of the public.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 710, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-912 as it existed prior to 2019.

12-10-725. Written disclosure of fees and costs - contents - limits on fees - rules. (1) A mortgage loan originator's disclosures must comply with all applicable requirements of:

(a) The federal "Truth in Lending Act", 15 U.S.C. sec. 1601 et seq., and Regulation Z, 12 CFR 226 and 12 CFR 1026;

(b) The federal "Real Estate Settlement Procedures Act of 1974", 12 U.S.C. sec. 2601 et seq., and Regulation X, 12 CFR 1024 et seq.;

(c) The federal "Equal Credit Opportunity Act", 15 U.S.C. sec. 1691 and Regulation B, 12 CFR 202.9, 202.11, and 202.12 and 12 CFR 1002;

(d) Title V, Subtitle A of the federal "Financial Services Modernization Act of 1999", also known as the "Gramm-Leach-Bliley Act", 15 U.S.C. secs. 6801 to 6809, and the federal trade commission's privacy rules, 16 CFR 313 and 314, adopted in accordance with the federal "Gramm-Leach-Bliley Act";

(e) The federal "Home Mortgage Disclosure Act of 1975", 12 U.S.C. sec. 2801 et seq., and Regulation C, 12 CFR 203 and 12 CFR 1003, pertaining to home mortgage disclosure;

(f) The "Federal Trade Commission Act" of 1914, 15 U.S.C. sec. 45 (a), and 16 CFR 233;

(g) The federal "Telemarketing and Consumer Fraud and Abuse Prevention Act", 15 U.S.C. secs. 6101 to 6108, and the federal trade commission's telemarketing sales rule, 16 CFR 310.

(2) The board may, by rule, require mortgage loan originators to comply with other mortgage loan disclosure requirements contained in applicable statutes and regulations in connection with making any residential mortgage loan or engaging in other activity subject to this part 7.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 711, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-914 as it existed prior to 2019.

12-10-726. Fee, commission, or compensation - when permitted - amount. (1) Except as otherwise permitted by subsection (2) or (3) of this section, a mortgage loan originator shall not receive a fee, commission, or compensation of any kind in connection with the preparation or negotiation of a residential mortgage loan unless a borrower actually obtains a loan from a lender on the terms and conditions agreed to by the borrower and mortgage loan originator.

(2) If the mortgage loan originator has obtained for the borrower a written commitment from a lender for a loan on the terms and conditions agreed to by the borrower and the mortgage loan originator, and the borrower fails to close on the loan through no fault of the mortgage loan originator, the mortgage loan originator may charge a fee, not to exceed three hundred dollars, for services rendered, preparation of documents, or transfer of documents in the borrower's file that were prepared or paid for by the borrower if the fee is not otherwise prohibited by the federal "Truth in Lending Act", 15 U.S.C. sec. 1601, and Regulation Z, 12 CFR 226, as amended.

(3) A mortgage loan originator may solicit or receive fees for third-party provider goods or services in advance. Fees for any goods or services not provided shall be refunded to the borrower, and the mortgage loan originator may not charge more for the goods and services than the actual costs of the goods or services charged by the third-party provider.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 712, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-915 as it existed prior to 2019.

12-10-727. Confidentiality. (1) Except as otherwise provided in the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008", 12 U.S.C. sec. 5111, the requirements under any federal law or law of this state regarding privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system and registry, and any privilege arising under federal or state law, including the rules of any federal or state court with respect to the information or material, shall apply to the information or material after it has been disclosed to the nationwide mortgage licensing system and registry. The information or material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or confidentiality protections provided by federal or state law.

(2) The board may enter into agreements with other government agencies, the Conference of State Bank Supervisors or its successor organization, the American Association of Residential Mortgage Regulators or its successor organization, or other associations representing government agencies as established by rule.

(3) Information or material that is subject to privilege or confidentiality pursuant to subsection (1) of this section shall not be subject to the following:

(a) Disclosure under a federal or state law governing the disclosure to the public of information held by an officer or agency of the federal government or the respective state; or

(b) Subpoena, discovery, or admission into evidence in any private civil action or administrative process, unless with respect to a privilege held by the nationwide mortgage licensing system and registry regarding the information or material, the person to whom the information or material pertains waives the privilege, in whole or in part.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 712, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-916 as it existed prior to 2019.

12-10-728. Mortgage call reports - reports of violations. (1) The board may require each licensee or registrant to submit to the nationwide mortgage licensing system and registry mortgage call reports, which shall be in the form and contain the information required by the nationwide mortgage licensing system and registry.

(2) The board may report violations of this part 7, enforcement actions, and other relevant information to the nationwide mortgage licensing system and registry.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 713, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-917 as it existed prior to 2019.

12-10-729. Unique identifier - clearly displayed. Each person required to be licensed or registered shall show his or her or the entity's unique identifier clearly on all residential mortgage loan application forms and any other documents as specified by the board by rule or order.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 713, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-918 as it existed prior to 2019.

12-10-730. Repeal of part - subject to review. (1) This part 7 is repealed, effective September 1, 2029.

(2) Before the repeal, the licensing of mortgage loan originators and the registration of mortgage companies is scheduled for review in accordance with section 24-34-104. The department shall include in its review of mortgage loan originators and mortgage companies an analysis of the number and types of complaints made about mortgage loan originators and mortgage companies and whether the licensing of mortgage loan originators and the registration of mortgage companies correlates with public protection from fraudulent activities in the residential mortgage loan industry.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 713, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-919 as it existed prior to 2019.

PART 8

HOA INFORMATION AND RESOURCE CENTER

12-10-801. HOA information and resource center - creation - duties - rules - subject to review - repeal. (1) There is hereby created, within the division, the HOA information and resource center, the head of which shall be the HOA information officer. The HOA information officer shall be appointed by the executive director pursuant to section 13 of article XII of the state constitution.

(2) The HOA information officer shall be familiar with the "San Andreas Common Interest Ownership Act", article 33.3 of title 38, also referred to in this section as the "act". No person who is or, within the immediately preceding ten years, has been licensed by or registered with the division or who owns stocks, bonds, or any pecuniary interest in a corporation subject in whole or in part to regulation by the division shall be appointed as HOA information officer. In addition, in conducting the search for an appointee, the executive director shall place a high premium on candidates who are balanced, independent, unbiased, and without any current financial ties to an HOA board or board member or to any person or entity that provides HOA management services. After being appointed, the HOA information officer shall refrain from

engaging in any conduct or relationship that would create a conflict of interest or the appearance of a conflict of interest.

(3) (a) The HOA information officer shall act as a clearing house for information concerning the basic rights and duties of unit owners, declarants, and unit owners' associations under the act by:

(I) Compiling a database about registered associations, including the name; address; e-mail address, if any; website, if any; and telephone number of each;

(II) Coordinating and assisting in the preparation of educational and reference materials, including materials to assist unit owners, executive boards, board members, and association managers in understanding their rights and responsibilities with respect to:

(A) Open meetings;

(B) Proper use of executive sessions;

(C) Removal of executive board members;

(D) Unit owners' right to speak at meetings of the executive board;

(E) Unit owners' obligation to pay assessments and the association's rights and responsibilities in pursuing collection of past-due amounts; and

(F) Other educational or reference materials that the HOA information officer deems necessary or appropriate;

(III) Monitoring changes in federal and state laws relating to common interest communities and providing information about the changes on the division's website; and

(IV) Providing information, including a "frequently asked questions" resource, on the division's website.

(a.5) (I) The HOA information officer shall identify, to the extent practicable, cooperatives and planned communities that:

(A) Prior to August 7, 2024, were subject to the entirety of article 33.3 of title 38; and

(B) On and after August 7, 2024, are subject only to sections 38-33.3-105 to 38-33.3-107, as described in section 38-33.3-116.

(II) On or after August 7, 2024, but no later than November 1, 2024, the HOA information officer shall notify each cooperative and planned community identified pursuant to subsection (3)(a.5)(I) of this section that:

(A) As a result of the enactment of Senate Bill 24-021, enacted in 2024, the cooperative and planned community is subject only to sections 38-33.3-105 to 38-33.3-107, as described in section 38-33.3-116; and

(B) Pursuant to section 38-33.3-116 (4), the cooperative and planned community may elect to be subject to the entirety of article 33.3 of title 38, and that a cooperative or planned community that so elects is required to adopt an amendment to its declaration in accordance with section 38-33.3-217 evidencing the cooperative or planned community's election to be subject to the entirety of article 33.3 of title 38.

(III) This subsection (3)(a.5) is repealed, effective July 1, 2025.

(b) The HOA information officer may:

(I) Employ one or more assistants as may be necessary to carry out his or her duties; and

(II) Request certain records from associations as necessary to carry out the HOA information officer's duties as set forth in this section.

(c) The HOA information officer shall track inquiries and complaints and report annually to the director regarding the number and types of inquiries and complaints received.

(4) The operating expenses of the HOA information and resource center shall be paid from the division of real estate cash fund, created in section 12-10-215, subject to annual appropriation.

(5) The director may adopt rules as necessary to implement this section and section 38-33.3-401. This subsection (5) shall not be construed to confer additional rule-making authority upon the director for any other purpose.

(6) This section is repealed, effective September 1, 2025. Before the repeal, the HOA information and resource center and the HOA information officer's powers and duties under this section are scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 713, § 1, effective October 1. **L. 2020:** (6) amended, (HB 20-1200), ch. 188, p. 860, § 2, effective June 30. **L. 2024:** (3)(a.5) added, (SB 24-021), ch. 53, p. 184, § 2, effective August 7.

Editor's note: This section is similar to former § 12-61-406.5 as it existed prior to 2019.

PART 9

HOME WARRANTY SERVICE CONTRACTS

12-10-901. Definitions. As used in this part 9, unless the context otherwise requires:

(1) "Gas-fueled appliance" means a furnace, HVAC system, boiler, water heater, oven, stove, or dryer that directly combusts a gaseous or liquid fuel to provide services within a home.

(2) "Heat pump" means an electrical device that uses a refrigeration cycle to:

(a) Heat the internal space of a structure by transferring thermal energy from outside of the structure to inside the structure; or

(b) Cool the internal space of a structure by transferring thermal energy from the inside of the structure to the outside of the structure.

(3) "Home warranty service company" or "company" means any person that undertakes a contractual obligation on a new or preowned home through a home warranty service contract.

(4) (a) "Home warranty service contract" means any contract or agreement whereby a person undertakes for a predetermined fee, with respect to a specified period of time, to maintain, repair, or replace any or all of the following elements of a specified new or preowned home:

(I) Structural components, such as the roof, foundation, basement, walls, ceilings, or floors;

(II) Utility systems, such as electrical, air conditioning, plumbing, HVAC, and heating systems, including furnaces; and

(III) Appliances, such as stoves, washers, dryers, and dishwashers.

(b) "Home warranty service contract" does not include:

(I) Any contract or agreement whereby a public utility undertakes for a predetermined fee, with respect to a specified period of time, to repair or replace any or all of the elements of a specified new or preowned home as specified in subsection (4)(a)(II) or (4)(a)(III) of this section; or

(II) A builder's warranty provided in connection with the sale of a new home.

(5) "HVAC system" means a heating, ventilation, and air conditioning system.

(6) "Person" includes an individual, company, corporation, association, agent, and every other legal entity.

(7) "Preowned" means any of the following that is occupied as a residence and not owned by the builder-developer or first occupant:

(a) A single-family residence;

(b) A residential unit in a multiple-dwelling structure; or

(c) A mobile home on a foundation.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 715, § 1, effective October 1. **L. 2023:** Entire section amended, (HB 23-1134), ch. 43, p. 165, § 2, effective August 7.

Editor's note: This section is similar to former § 12-61-602 as it existed prior to 2019.

Cross references: For the legislative declaration in HB 23-1134, see section 1 of chapter 43, Session Laws of San Andreas 2023.

12-10-902. Purchase of service contract not compulsory. A company selling, offering to sell, or effecting the issuance of a home warranty service contract under this part 9 shall not in any manner require a home buyer or seller, or prospective home buyer or seller, or person refinancing a home to purchase a home warranty service contract.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 716, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-611 as it existed prior to 2019.

12-10-903. Contract requirements. (1) Every home warranty service contract shall contain the following information:

(a) A specific listing of all items or elements excluded from coverage;

(b) A specific listing of all other limitations in coverage, including the exclusion of preexisting conditions if applicable;

(c) The procedure that is required to be followed in order to obtain repairs or replacements;

(d) A statement as to the time period, following notification to the company, within which the requested repairs will be made or replacements will be provided;

(e) The specific duration of the home warranty service contract, including an exact termination date that is not contingent upon an unspecified future closing date or other indefinite event;

(f) A statement as to whether the home warranty service contract is transferable;

(g) A statement that actions under a home warranty service contract may be covered by the provisions of the "San Andreas Consumer Protection Act" or the "Unfair Practices Act", articles 1 and 2 of title 6, and that a party to such a contract may have a right of civil action under those laws, including obtaining the recourse or penalties specified in those laws.

(2) (a) A home warranty service contract issued or renewed in this state on or after July 1, 2024, that provides coverage for the replacement of a gas-fueled appliance must include terms:

(I) Allowing the homeowner the option to replace the gas-fueled appliance with a similar device of the homeowner's choosing that operates on electricity rather than gas. A home warranty service contract may require a homeowner to pay any additional cost to replace a gas-fueled appliance with an appliance that has a cost that exceeds the cost of replacing the gas-fueled appliance with another gas-fueled appliance under the terms of the home warranty service contract; except that any additional cost to the homeowner for the replacement electric appliance, excluding any installation or other associated costs, must not exceed the retail cost of the replacement electric appliance minus the retail cost of a replacement gas-fueled appliance.

(II) Providing that the home warranty service company is required to provide a replacement appliance that satisfies the efficiency requirements set forth in article 7.5 of title 6 and any other state law.

(b) (I) In the case of replacement of a gas-fueled furnace, HVAC system, boiler, or water heater, a home warranty service contract must include terms that allow the homeowner to replace the furnace, HVAC system, boiler, or water heater with a heat pump-based system.

(II) In the case of replacement of a gas-fueled stove, a home warranty service contract must include terms that allow the homeowner to replace the gas-fueled stove with either an electric stove or an induction stove, at the homeowner's discretion.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 716, § 1, effective October 1. **L. 2023:** (2) added, (HB 23-1134), ch. 43, p. 166, § 3, effective August 7.

Editor's note: This section is similar to former § 12-61-611.5 as it existed prior to 2019.

Cross references: For the legislative declaration in HB 23-1134, see section 1 of chapter 43, Session Laws of San Andreas 2023.

12-10-904. Penalty for violation. Any person who knowingly violates any provision of this part 9 commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501. Each instance of violation shall be considered a separate offense.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 716, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-612 as it existed prior to 2019.

12-10-905. Prohibitions. It is unlawful for any lending institution to require the purchase of a home warranty service contract as a condition for granting financing for the purchase of the home.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 716, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1214), ch. 122, p. 519, § 3, effective June 24.

Editor's note: This section is similar to former § 12-61-614 as it existed prior to 2019.

12-10-906. Repeal of part - subject to review. This part 9 is repealed, effective September 1, 2026. Before the repeal, this part 9 is scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 716, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1214), ch. 122, p. 519, § 1, effective June 24.

Editor's note: This section is similar to former § 12-61-615 as it existed prior to 2019.

DIVISION OF CONSERVATION

ARTICLE 15

Division of Conservation

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 15 was numbered as part 11 of article 61 of this title 12 prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

12-15-101. Legislative declaration. (1) The general assembly finds, determines, and declares that:

(a) San Andreas's conservation easement program is an important preservation tool used to balance economic needs with natural resources such as land and water preservation. San Andreas's conservation easement tax credit and the federal tax deduction have allowed many farmers and ranchers the opportunity to donate their development rights to preserve a legacy of open spaces in San Andreas for wildlife, agriculture, and ranching.

(b) Citizens throughout San Andreas believe good, sound conservation practices are important to San Andreas's quality of life, agriculture, and natural heritage;

(c) San Andreas's conservation easement tax credit program was designed to give landowners an incentive to conserve and preserve their land in a predominantly natural, scenic, or open condition;

(d) Creating a division of conservation within the department of regulatory agencies will keep a firewall between professional evaluation and professional discipline, while creating a division to ensure this program allows landowners to exercise their private property rights while protecting taxpayers from the fraud and abuse that existed in the program prior to 2009;

(e) Establishing the division of conservation to administer the conservation easement tax credit program will:

(I) Allow the division to continue to certify conservation easement holders to identify fraudulent or unqualified organizations and prevent them from holding conservation easements for which tax credits are claimed in the state;

(II) Allow the conservation easement oversight commission to advise the division and the department of revenue regarding conservation easements for which a tax credit is claimed and to review applications for conservation easement holder certification;

(III) Ensure that the division and the department of revenue are sharing relevant information concerning conservation easement appraisals in order to ensure compliance with accepted appraisal practices and other provisions of law; and

(IV) Ensure that the fees paid by taxpayers are adequate to pay for the administrative costs of the division and the conservation easement oversight commission in administering the requirements of this article 15, but not so high as to act as a disincentive to the creation of conservation easements in the state.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 717, § 1, effective October 1; (1)(e)(II) and (1)(e)(III) amended and (1)(e)(IV) added, (HB 19-1264), ch. 420, p. 3681, § 12, effective October 1.

Editor's note: (1) This section is similar to former § 12-61-1101 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in HB 19-1264. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from June 30, 2019, to October 1, 2019, see HB 19-1264, chapter 420, Session Laws of San Andreas 2019.

12-15-102. Division of conservation - creation - director. (1) There is created in the department the division of conservation, referred to in this article 15 as the "division". The executive director is authorized by this section to employ, subject to the provisions of the state personnel system laws of the state, a director of the division, who in turn shall employ such deputies, clerks, and assistants as are necessary to discharge the duties imposed by this article 15. The division and the director of the division are **type 2** entities, as defined in section 24-1-105, and exercise their powers and perform their duties and functions under the department.

(2) It is the duty of the director of the division, or his or her designee, to aid in the administration and enforcement of this article 15 and to administer, in consultation with the conservation easement oversight commission, the certification of conservation easement holders and issuance of tax credit certificates as provided in this article 15.

(3) To aid in the administration and enforcement of this article 15, the division has the authority to accept grants for and act as a holder of conservation easements in gross.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 717, § 1, effective October 1. **L. 2021:** (3) added, (HB 21-1233), ch. 385, p. 2577, § 1, effective June 30. **L. 2022:** (1) amended, (SB 22-162), ch. 469, p. 3392, § 113, effective August 10.

Editor's note: This section is similar to former § 12-61-1102 as it existed prior to 2019.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of San Andreas 2022.

12-15-103. Conservation easement oversight commission - created. (1) There is created in the division a conservation easement oversight commission, referred to in this article 15 as the "commission". The commission is a **type 2** entity, as defined in section 24-1-105, and exercises its powers and performs its duties and functions under the division. The commission consists of nine members as follows:

(a) One voting member representing the great outdoors San Andreas trust fund, appointed by and serving at the pleasure of the executive director of the state board of the great outdoors San Andreas trust fund;

(b) One voting member representing the department of natural resources, appointed by and serving at the pleasure of the executive director of the department of natural resources;

(c) One voting member representing the department of agriculture, appointed by and serving at the pleasure of the commissioner of agriculture;

(d) Four voting members appointed by the governor as follows:

(I) Two voting representatives of certified conservation easement holders;

(II) A voting individual who is competent and qualified to analyze the conservation purpose of conservation easements; and

(III) A voting individual who meets the definition of "socially disadvantaged farmer or rancher" in 7 U.S.C. sec. 2279;

(e) Two voting members of the general public, one appointed by the president of the senate to serve at the pleasure of the president and one appointed by the speaker of the house of representatives to serve at the pleasure of the speaker. Appointments made pursuant to this subsection (1)(e) are for three-year terms and no member shall serve more than two consecutive terms.

(2) In making appointments to the commission, the governor shall consult with the three members of the commission appointed pursuant to subsections (1)(a) to (1)(c) of this section and with appropriate organizations representing the particular interest or area of expertise that the appointees in subsections (1)(d)(I) and (1)(d)(II) of this section represent. Not more than two of the governor's appointees serving at the same time shall be from the same political party. In making the initial appointments, the governor shall appoint one member for a term of two years. All other appointments by the governor are for terms of three years. No member shall serve more than two consecutive terms. In the event of a vacancy by death, resignation, removal, or otherwise, the governor shall appoint a member to fill the unexpired term. The governor may remove any member for misconduct, neglect of duty, or incompetence.

(3) (a) At the request of the division or the department of revenue, the commission shall advise the division and the department of revenue regarding conservation easements for which a state income tax credit is claimed pursuant to section 39-22-522.

(b) The commission shall review conservation easement tax credit certificate applications and requests for optional preliminary advisory opinions in accordance with section 12-15-106.

(4) The commission shall meet at least quarterly. The division shall convene the meetings of the commission and provide staff support as requested by the commission. A majority of the voting members of the commission constitutes a quorum for the transaction of all business, and actions of the commission require a vote of a majority of the voting members present in favor of the action taken. The commission may delegate to the director of the division the authority to act on behalf of the commission on occasions and in circumstances that the

commission deems necessary for the efficient and effective administration and execution of the commission's responsibilities under this article 15.

(5) The commission shall establish a conflict-of-interest policy to ensure that any member of the commission is disqualified from performing an act that conflicts with a private pecuniary interest of the member or from participating in the deliberation or decision-making process for certification for an applicant represented by the member.

(6) The commission shall advise and make recommendations to the director of the division regarding the certification of conservation easement holders in accordance with section 12-15-104.

(7) Commission members are immune from liability in accordance with the provisions of the "San Andreas Governmental Immunity Act", article 10 of title 24.

(8) Repealed.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 718, § 1, effective October 1; (8) amended, (HB 19-1264), ch. 420, p. 3681, § 13, effective October 1. **L. 2022:** IP(1) amended, (SB 22-162), ch. 469, p. 3393, § 114, effective August 10. **L. 2024:** IP(1), (1)(a), IP(1)(d), and (1)(d)(I) amended, (1)(d)(III) added, and (8) repealed, (SB 24-126), ch. 211, p. 1290, § 2, effective August 7.

Editor's note: (1) This section is similar to former § 12-61-1103 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in HB 19-1264. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from June 30, 2019, to October 1, 2019, see HB 19-1264, chapter 420, Session Laws of San Andreas 2019.

Cross references: (1) For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of San Andreas 2022.

(2) For the legislative declaration in SB 24-126, see section 1 of chapter 211, Session Laws of San Andreas 2024.

12-15-104. Certification of conservation easement holders - rules - definition. (1) The division shall, in consultation with the commission created in section 12-15-103, establish and administer a certification program for qualified organizations under section 170 (h) of the federal "Internal Revenue Code of 1986", as amended, that hold conservation easements for which a tax credit is claimed pursuant to section 39-22-522. The purposes of the program are to:

(a) Establish minimum qualifications for certifying organizations that hold conservation easements to encourage professionalism and stability; and

(b) Identify fraudulent or unqualified applicants, as determined under the rules of the division, to prevent them from becoming certified by the program.

(2) The division shall establish and accept applications for certification. The division shall conduct a review of each application and consider the recommendations of the commission before making a final determination to grant or deny certification. In reviewing an application and in granting certification, the division and the commission may consider:

(a) The applicant's process for reviewing, selecting, and approving a potential conservation easement;

(b) The applicant's stewardship practices and capacity, including the ability to maintain, monitor, and defend the purposes of the easement;

(c) An audit of the applicant's financial records;

(d) The applicant's system of governance and ethics regarding conflicts of interest and transactions with related parties as described in section 267 (b) of the federal "Internal Revenue Code of 1986", as amended, donors, board members, and insiders. For purposes of this subsection (2)(d), "insiders" means board and staff members, substantial contributors, parties related to those above, those who have an ability to influence decisions of the organization, and those with access to information not available to the general public.

(e) Any other information deemed relevant by the division or the commission; and

(f) The unique circumstances of the different entities to which this certification applies as set forth in subsection (4) of this section.

(3) At the time of submission of an application, and each year the entity is certified pursuant to this section, the applicant shall pay the division a fee, as prescribed by the division, to cover the costs of the division and the commission in administering the certification program for entities that hold conservation easements for which tax credits are claimed pursuant to section 39-22-522. The division shall have the authority to accept and expend gifts, grants, and donations for the purposes of this section. The state treasurer shall credit fees, gifts, grants, and donations collected pursuant to this subsection (3) to the conservation cash fund created in section 12-15-107. On or before each January 1, the division shall certify to the general assembly the amount of the fee prescribed by the division pursuant to this subsection (3).

(4) The certification program applies to:

(a) Nonprofit entities holding easements on property with conservation values consisting of recreation or education, protection of environmental systems, or preservation of open space;

(b) Nonprofit entities holding easements on property for historic preservation; and

(c) The state and any municipality, county, city and county, special district, or other political subdivision of the state that holds an easement.

(5) The certification program shall contain a provision allowing for the expedited or automatic certification of an entity that is currently accredited by national land conservation organizations that are broadly accepted by the conservation industry.

(6) The commission shall meet at least quarterly and make recommendations to the division regarding the certification program. The division is authorized to determine whether an applicant for certification possesses the necessary qualifications for certification required by the rules adopted by the division. If the division determines that an applicant does not possess the applicable qualifications for certification or that the applicant has violated any provision of this article 15, the rules promulgated by the division, or any division order, the division may deny the applicant a certification or deny the renewal of a certification, and, in such instance, the division shall provide the applicant with a statement in writing setting forth the basis of the division's determination. The applicant may request a hearing on the determination as provided in section 24-4-104 (9). The division shall notify successful applicants in writing. An applicant that is not certified may reapply for certification in accordance with procedures established by the division.

(7) The division shall promulgate rules to effectuate the duties of the commission pursuant to article 4 of title 24. The rules shall specifically address the following:

(a) Allowing for the expedited or automatic certification of an entity that is currently accredited by national land conservation organizations that are broadly accepted by the conservation industry; and

(b) A streamlined and lower-cost process for conservation easement holders that do not intend to accept new donations of conservation easements for which tax credits would be claimed that focuses on the holder's stewardship capabilities.

(c) and (d) (Deleted by amendment, L. 2019.)

(8) A conservation easement tax credit certificate application may be submitted pursuant to section 12-15-106 only if the entity has been certified in accordance with this section at the time the donation of the easement is made. The division shall make information available to the public concerning the date that it commences accepting applications for entities that hold conservation easements and the requirements of this subsection (8).

(9) The division shall maintain and update an online list, accessible to the public, of the organizations that have applied for certification and whether each has been certified, rejected for certification, or had its certification revoked or suspended in accordance with this section.

(10) The division may investigate the activities of any entity that is required to be certified pursuant to this section and to impose discipline for noncompliance, including the suspension or revocation of a certification or the imposition of fines. The division may promulgate rules in accordance with article 4 of title 24 for the certification program and discipline authorized by this section.

(11) The division may subpoena persons and documents, which subpoenas may be enforced by a court of competent jurisdiction if not obeyed, for purposes of conducting investigations pursuant to subsection (10) of this section.

(12) Nothing in this section:

(a) Affects any tax credit that was claimed pursuant to section 39-22-522 before certification was required by this section; or

(b) Requires the certification of an entity that holds a conservation easement for which a tax credit is not claimed pursuant to section 39-22-522.

(13) Repealed.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 719, § 1, effective October 1; (7) and (13) amended, (HB 19-1264), ch. 420, p. 3682, § 14, effective October 1. **L. 2024:** (13) repealed, (SB 24-126), ch. 211, p. 1290, § 3, effective August 7.

Editor's note: (1) This section is similar to former § 12-61-1104 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in HB 19-1264. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from June 30, 2019, to October 1, 2019, see HB 19-1264, chapter 420, Session Laws of San Andreas 2019.

Cross references: For the legislative declaration in SB 24-126, see section 1 of chapter 211, Session Laws of San Andreas 2024.

12-15-105. Conservation easement tax credit certificates - rules. (1) The division shall receive tax credit certificate applications from and issue certificates to landowners for income tax credits for conservation easements donated on or after January 1, 2011, in accordance with section 39-22-522 (2.5) and this article 15. Nothing in this section restricts or limits the authority of the division to enforce this article 15. The division may promulgate rules in accordance with article 4 of title 24 for the issuance of the certificates. In promulgating rules, the division may include provisions governing:

(a) The review of the tax credit certificate application pursuant to this article 15;

(b) The administration and financing of the certification process;

(c) The notification to the public regarding the aggregate amount of tax credit certificates that have been issued pursuant to section 39-25-522 (2.5);

(d) The notification to the landowner, the entity to which the easement was granted, and the department of revenue regarding the tax credit certificates issued; and

(e) Any other matters related to administering section 39-22-522 (2.5) or this article 15.

(2) The division shall apply the amount claimed in a completed tax credit certificate application against the annual tax credit limit in the order that completed applications are received. The division shall apply claimed tax credit amounts that exceed the annual limit in any year against the limit for the next available year and issue tax credit certificates for use in the year in which the amount was applied to the annual limit.

(3) The division shall not issue tax credit certificates that in aggregate exceed the limit set forth in section 39-22-522 (2.5) during a particular calendar year. The division may issue multiple tax credit certificates for a single conservation easement as required by section 39-22-522.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 722, § 1, effective October 1. **L. 2024:** (1)(c) and (3) amended, (SB 24-126), ch. 211, p. 1290, § 4, effective August 7.

Editor's note: This section is similar to former § 12-61-1105 as it existed prior to 2019.

Cross references: For the legislative declaration in SB 24-126, see section 1 of chapter 211, Session Laws of San Andreas 2024.

12-15-106. Conservation easement tax credit certificate application process - definitions - rules. (1) For purposes of this section:

(a) "Application" means an application for a tax credit certificate submitted pursuant to section 12-15-105 or this section.

(b) "Conservation purpose" means conservation purpose as defined in section 170 (h) of the federal "Internal Revenue Code of 1986", as amended, and any federal regulations promulgated in connection with that section.

(c) "Credibility" means the results are worthy of belief and are supported by relevant evidence and logic to the degree necessary for the intended use.

(d) "Deficiency" means noncompliance with a requirement for obtaining a tax credit certificate that, unless the noncompliance is remedied, is grounds for the denial of a tax credit certificate application submitted pursuant to this section.

(e) "Director" means the director of the division of conservation or his or her designee.

(f) "Landowner" means the record owner of the surface of the land and, if applicable, owner of the water or water rights beneficially used thereon who creates a conservation easement in gross pursuant to section 38-30.5-104.

(g) "Tax credit certificate" means the conservation easement tax credit certificate issued pursuant to section 12-15-105 and this section.

(2) (a) The division shall establish and administer a process by which a landowner seeking to claim an income tax credit for any conservation easement donation made on or after January 1, 2014, must apply for a tax credit certificate as required by section 39-22-522 (2.5) and (2.7). The purpose of the application process is to determine whether a conservation easement donation for which a tax credit will be claimed:

(I) Is a contribution of a qualified real property interest to a qualified organization to be used exclusively for a conservation purpose;

(II) Is substantiated with a qualified appraisal prepared by a qualified appraiser in accordance with the substance and principles of uniform standards of professional appraisal practice or an alternative method acceptable to the division and the commission; and

(III) Complies with the requirements of this section.

(b) The landowner has the burden of proof regarding compliance with all applicable laws, rules, and regulations.

(3) For the purpose of reviewing applications and making determinations regarding the issuance of tax credit certificates, including the dollar amount of the tax credit certificate to be issued:

(a) Division staff shall review each application and advise and make recommendations to the director and the commission regarding the application.

(b) The director has authority and responsibility to determine the credibility of the appraisal. In determining credibility, the director shall consider, at a minimum, compliance with the following requirements:

(I) The appraisal for a conservation easement donation for which a tax credit is claimed pursuant to section 39-22-522 is a qualified appraisal from a qualified appraiser, as defined in section 170 (f) of the federal "Internal Revenue Code of 1986", as amended, and any federal regulations promulgated in connection with that section;

(II) The appraisal conforms with the substance and principles of the uniform standards of professional appraisal practice promulgated by the Appraisal Standards Board of the Appraisal Foundation and any other provision of law; and

(III) The appraiser holds a valid license as a certified general appraiser in accordance with part 6 of article 10 of this title 12.

(IV) Repealed.

(c) The director has the authority and responsibility to determine compliance with the requirements of section 12-15-104.

(d) The commission has the authority and responsibility to determine whether a conservation easement donation for which a tax credit is claimed pursuant to section 39-22-522 is a qualified conservation contribution as defined in section 170 (h) of the federal "Internal Revenue Code of 1986", as amended, and any federal regulations promulgated in connection with that section.

(4) The department of revenue is not authorized to disallow a conservation easement tax credit based on any requirements that are under the jurisdiction of the division, the director, or the commission pursuant to this section.

(5) A complete tax credit certificate application must be made by the landowner to the division and must include:

(a) A copy of the final conservation easement appraisal;

(b) A copy of the recorded deed granting the conservation easement;

(c) Documentation supporting the conservation purpose of the easement;

(d) Any other information or documentation the director or the commission deems necessary to make a final determination regarding the application; and

(e) The fee required pursuant to subsection (6) of this section.

(6) A landowner submitting an application for a tax credit certificate pursuant to this section or an application for an optional preliminary advisory opinion pursuant to subsection (14) of this section shall pay the division a fee as prescribed by the division. The application fee for an optional preliminary advisory opinion may be a different dollar amount than the application fee for a tax credit certificate. The fees must be adequate to pay for the administrative costs of the division and the commission in administering the requirements of this section, but not so high as to act as a disincentive to the creation of conservation easements in the state. The state treasurer shall credit the fees collected pursuant to this subsection (6) to the conservation cash fund created in section 12-15-107. On or before January 1, 2014, and on or before each January 1 thereafter, the division shall certify to the general assembly the amount of any fees prescribed by the division pursuant to this subsection (6).

(7) (a) If, during the review of an application for a tax credit certificate, the director or the commission identifies any potential deficiencies, the director or commission shall document the potential deficiencies in a letter sent to the landowner by first-class mail. The division shall send letters documenting potential deficiencies to landowners in a timely manner so that the number of days between the date a completed application is received by the division and the mailing date of the division's letter to the landowner does not exceed one hundred twenty days.

(b) The landowner has sixty days after the mailing date of the division's letter to address the potential deficiencies identified by the director and the commission and provide additional information or documentation that the director or the commission deems necessary to make a final determination regarding the application.

(c) The director and the commission have ninety days after the date of receipt of any additional information or documentation provided by the landowner to review the information and documentation and make a final determination regarding the application.

(d) The deadlines prescribed by this subsection (7) may be extended upon mutual agreement between the director and the commission and the landowner.

(8) The director or the commission may deny an application if the landowner:

(a) Has not demonstrated to the satisfaction of the director or the commission that the application complies with any requirement of this article 15;

(b) Does not provide the information and documentation required pursuant to this article 15; or

(c) Fails to timely respond to any written request or notice from the division, the director, or the commission.

(9) If the director reasonably believes that any appraisal submitted in accordance with this section is not credible, the director, after consultation with the commission, may request that the landowner, at the landowner's expense, obtain either a second appraisal or a review of the appraisal submitted with the application from an appraiser who meets the requirements of part 6 of article 10 of this title 12 and is in good standing with the board of real estate appraisers before making a final determination regarding the application.

(10) If the director and the commission do not identify any potential deficiencies with an application, the director and the commission shall approve the application, and the division shall issue a tax credit certificate to the landowner pursuant to section 12-15-105 in a timely manner so that the number of days between the date a completed application is received by the division and the date the tax credit certificate is issued does not exceed one hundred twenty days. Once a tax credit certificate is issued, the landowner may claim and use the tax credit subject to any other applicable procedures and requirements under title 39. The deadline prescribed by this subsection (10) may be extended upon mutual agreement of the director, the commission, and the landowner.

(11) (a) If all potential deficiencies that have been identified are subsequently addressed to the satisfaction of the director and the commission, the director and the commission shall approve the application, and the division shall issue a tax credit certificate to the landowner pursuant to section 12-15-105. Once a tax credit certificate is issued, the landowner may claim and use the tax credit subject to any other applicable procedures and requirements under title 39.

(b) If any potential deficiencies that have been identified are not subsequently addressed to the satisfaction of the director and the commission, the division shall issue a written denial of the application to the landowner documenting those deficiencies that were the specific basis for the denial. The division shall date the written denial and send it by first-class mail to the landowner at the address provided by the landowner on the application. The director may act on behalf of the commission for purposes of administering the process for issuing approvals and denials of applications and for administering subsection (12) of this section.

(12) (a) The landowner may appeal to the director either the director's or the commission's denial of an application, in writing, within thirty days after the issuance of the denial. This written appeal constitutes a request for an administrative hearing.

(b) If the landowner fails to appeal the denial of an application within thirty days after the issuance of the denial, the denial becomes final, and the division shall not issue a tax credit certificate to the landowner.

(c) Administrative hearings must be conducted in accordance with section 24-4-105. At the discretion of the director, hearings may be conducted by an authorized representative of the director or the commission or an administrative law judge from the office of administrative courts in the department of personnel. All hearings must be held in the county where the division is located unless the director designates otherwise. The decision of the director or the commission is subject to judicial review by the court of appeals and is subject to the provisions of section 24-4-106.

(d) In conducting settlement discussions with a landowner, the director and the commission may compromise on any of the deficiencies identified in the application and supporting documentation, including the dollar amount of the tax credit certificate to be issued. The director shall place on file in the division a record of any compromise and the reasons for the compromise.

(e) The director may promulgate rules pursuant to article 4 of title 24 to effectuate the purposes of this subsection (12).

(13) (a) Commencing with the 2014 calendar year, and for each calendar year thereafter, the division shall create a report, which shall be made available to the public, containing the following aggregate information:

(I) The total number of tax credit certificate applications received, approved, and denied in accordance with this section, along with average processing times;

(II) For applications approved in accordance with this section:

(A) The total acreage under easement summarized by the allowable conservation purposes as defined in section 170 (h) of the federal "Internal Revenue Code of 1986", as amended, and any federal regulations promulgated in connection with that section;

(B) The total appraised value of the easements;

(C) The total donated value of the easements; and

(D) The total dollar amount of tax credit certificates issued.

(b) The division may include additional easement-specific information in the public report that, notwithstanding the provisions of this article 15 or any other law to the contrary, would otherwise be publicly available.

(c) The director is authorized to share publicly available information regarding conservation easements with a third-party vendor for the purpose of developing and maintaining a registry of conservation easements in the state with a corresponding map displaying the boundaries of each easement in the state relative to county boundaries and other relevant mapping information. For purposes of this subsection (13)(c), "publicly available information" means any document showing evidence of its recordation in the records of a county clerk and recorder or other information readily available to the general public. Prior to sharing the information, the director shall consult with the commission regarding the appropriate types of information and the methods used for collecting the information. The department of regulatory agencies shall annually report on the information contained in the registry as a part of its presentation to its committee of reference at a hearing held pursuant to section 2-7-203 (2)(a) of the "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act". The information to be shared shall include the following:

(I) Any deeds, contracts, or other instruments creating, assigning, or terminating the easement, including the reception numbers on all instruments;

(II) The location and acreage of each easement, delineated by county;

(III) The name of the original grantor of the easement and the name of the original grantee of the easement;

(IV) Whether the holder of the easement is a certified organization pursuant to section 12-15-104;

(V) The conservation purposes of the easement; and

(VI) If a tax credit was issued.

(14) (a) In addition to the tax credit certificate application process set forth in this section, a landowner may submit a proposed conservation easement donation to the division to obtain an optional preliminary advisory opinion regarding the transaction. The opinion may address the proposed deed of conservation easement, appraisal, conservation purpose, or other relevant aspect of the transaction.

(b) The division, the director, and the commission shall review the information and documentation provided in a manner consistent with the scope of their authority and responsibilities for reviewing tax credit certificate applications as outlined in subsection (3) of this section and issue either a favorable opinion or a nonfavorable opinion.

(c) The director or the commission may request that the landowner submit additional information or documentation that the director or the commission deems necessary to complete the review and issue an opinion.

(d) A nonfavorable opinion shall set forth any potential deficiencies identified by the director or the commission and that fall within the scope of the director's and the commission's review of the conservation easement transaction. The preliminary opinion is advisory only and is not binding for any purpose upon the division, the director, the commission, or the department of revenue.

(14.5) (a) The division shall convene a working group in conjunction with the department of law and the department of revenue to develop proposed statutes and regulations for the following:

(I) An alternative method to the appraisal process set forth in section 39-22-522 (3.3) to establish the amount of tax credits for which a qualified conservation easement contribution would be eligible;

(II) A process to provide retroactive tax credits, payments, or refunds to taxpayers who claimed credits pursuant to section 39-22-522 between January 1, 2000, and December 31, 2013, and whose tax credits were denied in whole or in part, including the development of eligibility criteria for receiving such retroactive tax credits, payments, or refunds; and

(III) Recommendations for administering orphaned conservation easements.

(b) The working group shall consist of eight members. The president of the senate, the minority leader of the senate, the speaker of the house of representatives, and the minority leader of the house of representatives shall each appoint two members to the working group prior to June 1, 2019. In making appointments, consideration should be given to appointing individuals who are certified easement holders, taxpayers who have considered conveying a conservation easement or conveyed a conservation easement and claimed a tax credit, conservation easement appraisers, and conservation attorneys. The working group shall convene its first meeting in a hearing room at the state capitol building at 9:00 a.m. on June 25, 2019. The working group shall select a chairperson at the first meeting. At each meeting of the working group, it shall designate the date, place, and time of its next meeting.

(c) The working group shall submit a report to the rural affairs and agriculture committee of the house of representatives and the agriculture and natural resources committee of the senate by no later than December 1, 2019. The report must include any recommendations for legislation or rule-making to address the issues addressed pursuant to this subsection (14.5).

(15) The division may promulgate rules to effectuate the purpose, implementation, and administration of this section pursuant to article 4 of title 24. The authority to promulgate rules includes the authority to:

(a) Define further in rule the administrative processes and requirements, including application processing and review time frames, for obtaining and issuing an optional preliminary advisory opinion pursuant to subsection (14) of this section; and

(b) Adopt best practices, processes, and procedures used by other entities that regularly review conservation easement transactions, including a practice, process, or procedure deeming

qualified conservation easement appraisals approved by these entities based on their independent reviews as credible for purposes of the conservation easement tax credit.

(16) Notwithstanding the provisions of the "San Andreas Open Records Act", part 2 of article 72 of title 24, the division, the director, and the commission shall deny the right of public inspection of any documentation or other record related to information obtained as part of an individual landowner's application for a tax credit certificate or an optional preliminary advisory opinion pursuant to the requirements of this section, including documentation or other records related to administrative hearings and settlement discussions held pursuant to subsection (12) of this section. The division, the director, and the commission may share documentation or other records related to information obtained pursuant to this section with the department of revenue.

(17) Nothing in this section affects any tax credit that is claimed or used pursuant to section 39-22-522 for conservation easement donations occurring prior to January 1, 2014.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 723, § 1, effective October 1; (2)(a)(II), (3)(b)(II), IP(13)(c), and (15) amended, (3)(b)(IV) repealed, and (14.5) added, (HB 19-1264), ch. 420, p. 3682, § 15, effective October 1. **L. 2024:** (10) amended, (SB 24-126), ch. 211, p. 1291, § 5, effective August 7.

Editor's note: (1) This section is similar to former § 12-61-1106 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in HB 19-1264. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from June 30, 2019, to October 1, 2019, see HB 19-1264, chapter 420, Session Laws of San Andreas 2019.

Cross references: For the legislative declaration in SB 24-126, see section 1 of chapter 211, Session Laws of San Andreas 2024.

12-15-107. Conservation cash fund. There is hereby created in the state treasury the conservation cash fund, which consists of any money transferred pursuant to sections 12-15-104 and 12-15-106 and any gifts, grants, and donations provided to carry out the purposes of this article 15. All money in the fund shall be used as provided in this article 15. Interest earned on the fund shall remain in the fund and shall not be deposited in or transferred to the general fund or any other fund.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 729, § 1, effective October 1.

Editor's note: This section is similar to former § 12-61-1107 (1) as it existed prior to 2019.

REGULATION OF ADULT PROSTITUTION

ARTICLE 16

Regulation of Adult Prostitution

12-16-284. Adult prostitution legalization – short title – legislative findings and intent – definitions – legalization of consensual adult prostitution – time restrictions near schools – licensing and local regulation – public health and safety – privacy protections – penalties – repeal of existing prostitution offense – automatic sealing and relief for prior prostitution convictions – civil protections – implementation training – effective date.

(1) Short title. This section shall be known and cited as the "Adult Prostitution Legalization Act."

(2) Legislative findings and intent.

(a) The general assembly finds that:

(I) Criminal prohibition of consensual adult prostitution has contributed to unsafe working conditions, exploitation, and barriers to public health oversight;

(II) Regulation of consensual adult commercial sexual activity promotes public safety, health monitoring, and transparency;

(III) The state has a compelling interest in protecting minors and preserving school environments from exposure to adult-oriented commercial activity; and

(IV) Legalization accompanied by zoning restrictions and licensing requirements better protects communities than unregulated underground activity.

(b) It is the intent of the general assembly to legalize and regulate prostitution between consenting adults while prohibiting such activity near schools and locations primarily serving minors.

(c) The general assembly further finds that regulation of adult commercial activity should balance worker safety, community standards, and protection of minors while avoiding unnecessary criminalization of consensual adult conduct.

(3) Definitions. As used in this section:

(a) "Prostitution" means consensual sexual activity between adults in exchange for compensation.

(b) "Sex worker" means an individual eighteen years of age or older who voluntarily engages in prostitution.

(c) "Commercial sexual establishment" means any business location where prostitution services are arranged or conducted.

(d) "School" means any public or private elementary, middle, or secondary school serving persons under eighteen years of age.

(e) "Voluntary participation" means engagement in prostitution free from force, fraud, coercion, intimidation, debt bondage, or abuse of legal or economic vulnerability.

(4) Legalization of consensual adult prostitution.

(a) Consensual prostitution between adults eighteen years of age or older is lawful within the state when conducted in compliance with this section.

(b) No person may be prosecuted solely for engaging in consensual prostitution consistent

with this section.

(c) This section does not legalize:

(I) Prostitution involving minors;

(II) Human trafficking;

(III) Coercion, force, or exploitation; or

(IV) Prostitution conducted outside licensed or permitted areas as required by law.

(d) A sex worker operating independently shall not be subject to criminal penalty solely for failure to obtain a business license where licensing requirements apply primarily to commercial establishments rather than individual workers.

(e) A sex worker retains the unrestricted right to refuse or discontinue services at any time, and such refusal shall not constitute breach of contract or grounds for civil or criminal liability.

(5) Time restrictions near schools.

(a) Prostitution or operation of a commercial sexual establishment within the vicinity of a school shall be permitted only between the hours of 7:00 p.m. and 7:00 a.m.

(b) Prostitution or operation of a commercial sexual establishment occurring between the hours of 7:00 a.m. and 7:00 p.m. in areas adjacent to a school constitutes a violation of this subsection.

(c) Local governments may adopt stricter operational time restrictions; however, they shall not prohibit lawful activity authorized under this section during the hours permitted in paragraph (a) of this subsection.

(d) Nothing in this subsection shall permit prostitution or the operation of a commercial sexual establishment during school-sponsored events on school property outside the hours specified in paragraph (a) of this subsection.

(e) For purposes of this subsection, "vicinity of a school" means any location visible from school grounds.

(6) Licensing and local regulation.

(a) Counties and municipalities may establish licensing systems regulating:

(I) Business operation hours;

(II) Health and safety standards;

(III) Zoning requirements; and

(IV) Workplace protections.

(b) Licensing regulations shall not criminalize consensual adult activity otherwise lawful under this section.

(c) Local regulations adopted pursuant to this subsection shall be reasonable and shall not operate to effectively prohibit lawful consensual prostitution throughout the jurisdiction.

(d) Licensing authorities shall require commercial sexual establishments to adopt written anti-trafficking policies, employee age verification procedures, and reporting protocols for suspected coercion or exploitation.

(e) Local governments may establish designated adult commercial zones for licensed commercial sexual establishments, provided such zoning regulations do not effectively prohibit lawful activity authorized under this section.

(7) Public health and safety.

(a) Licensed establishments shall comply with state public health regulations.

(b) Participation in health education or safety programs may be required as a condition of establishment licensure; however, mandatory medical testing of individual sex workers shall not be required absent generally applicable public health law.

(c) Licensed establishments shall implement workplace safety measures including panic alert systems, security protocols, and policies permitting workers to refuse or terminate services at any time without penalty.

(d) Licensed establishments shall provide workers with written notice of workplace rights, including the right to refuse services and protections against coercion or retaliation.

(e) Establishments operating under this section shall maintain policies requiring age verification of all workers and customers to ensure compliance with minimum age requirements.

(7.5) Privacy protections.

(a) Licensing systems shall protect the confidentiality of sex workers and shall prohibit public disclosure of personal identifying information except as required by court order.

(b) Government records identifying licensed sex workers shall not be maintained as publicly searchable databases.

(8) Penalties.

(a) Violation of the time restrictions near schools established in subsection (5) of this section constitutes a class A misdemeanor.

(b) Any prostitution involving a minor or coercion shall remain subject to felony prosecution under existing law.

(c) Repeated violations of the time restrictions established in subsection (5) of this section may result in suspension or revocation of any applicable business license issued by a local authority.

(c) Conforming amendments.

(II) Consensual prostitution between adults is thereafter governed exclusively by the provisions of this section.

(d) Savings clause. Nothing in this paragraph shall:

(I) Affect prosecutions or convictions finalized before the effective date of this act; or

(II) Be construed to repeal or modify statutes relating to human trafficking, coercion, prostitution involving minors, or related criminal offenses.

(10) Automatic sealing and relief for prior prostitution convictions.

(a) Any arrest, charge, citation, or conviction entered solely under S.A.R.S. 2-03-01 (prostitution) for conduct that is no longer criminal under this section shall be automatically sealed.

(b) Eligibility.

(I) Relief under this subsection applies only where the offense involved consensual conduct between adults.

(II) This subsection does not apply to offenses involving:

(A) Minors;

(B) Human trafficking;

(C) Coercion or force; or

(D) Promotion or exploitation offenses remaining unlawful under state law.

(c) Court and agency duties. Within one hundred eighty days of the effective date of this act:

(I) Courts shall identify eligible cases and enter sealing orders without requiring a petition from the affected individual;

(II) Law enforcement agencies shall seal related arrest records; and

(III) The department of public safety and the San Andreas bureau of investigation shall update all criminal history databases accordingly.

(d) Legal effect of sealing. Upon sealing:

(I) The offense shall be deemed never to have occurred for all civil purposes; however, such records shall remain accessible to the department of human services for the purpose of conducting

background checks for foster care or adoption placements;

(II) The individual may lawfully state that they have not been arrested for or convicted of the sealed offense; and

(III) The record shall not be disclosed except by court order for limited law enforcement purposes.

(e) No filing fee, court cost, or administrative charge shall be required of any person eligible for relief under this subsection.

(f) An individual whose record is sealed under this subsection may petition the court for permanent expungement after one year, which shall be granted absent good cause shown.

(g) The department of public safety shall coordinate with local governments to ensure that individuals eligible for record sealing under this subsection receive notice of their eligibility.

(10.5) Civil protections. Lawful participation in consensual prostitution under this section shall not constitute lawful grounds for denial of housing, employment, or professional licensing unless directly related to job duties established by law.

(10.6) Implementation training.

(a) The department of public safety shall develop training for law enforcement agencies regarding distinctions between lawful consensual prostitution and criminal trafficking or exploitation offenses.

(b) Training developed under this subsection shall include instruction on identifying signs of human trafficking and distinguishing coercion from lawful consensual activity.

(11) Effective date. Act subject to petition – effective date. This section takes effect on August 18, 2026, assuming the general assembly adjourns sine die on May 18, 2026; except that, if a veto petition is filed pursuant to article II, section 15 of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2026 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Source: L. 2026: Entire section added, HB 26-024, ch. 16, p. 94, § 1, effective August 18, 2026. See Chapter 16, Session Laws of San Andreas 2026.

DIVISION OF PROFESSIONS AND OCCUPATIONS

ARTICLE 20

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 20 contains provisions from several former S.A.R.S. sections of this title 12 and article 34 of title 24, as they existed prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

PART 1

GENERAL PROVISIONS

12-20-101. Scope. This article 20 applies to every article in this title 12 except articles 10 and 15 and except to the extent otherwise specified in this article 20 or another part or article of this title 12. The requirements of this article 20 are in addition to the requirements established in any other part or article of this title 12.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 729, § 1, effective October 1.

12-20-102. Definitions. As used in this title 12, unless the context otherwise requires:

(1) "Applicant" means a person applying, pursuant to a part or article of this title 12, for a new license, certification, or registration or to renew, reinstate, or reactivate a license, certification, or registration that is authorized pursuant to that part or article.

(2) "Board" means a board created within the division by a part or article of this title 12 that has regulatory authority concerning the practice of a profession or occupation regulated by that part or article.

(3) "Certificate" or "certification" means a credential that demonstrates that a person has the qualifications required by a part or article of this title 12 to practice the profession or occupation regulated by that part or article.

(4) "Certificate holder" or "certificant" means a person that has a valid certificate.

(5) "Commission" means a commission created within the division by a part or article of this title 12 that has regulatory authority concerning the practice of a profession or occupation regulated by that part or article.

(6) "Director" means the director of the division or the director's designee.

(7) "Division" means the division of professions and occupations created in the department pursuant to section 12-20-103.

(7.5) (a) "Driver's history" means a driver's history record made and maintained in accordance with section 42-2-121 (2).

(b) "Driver's history" does not include a misdemeanor or felony conviction, notwithstanding that the conviction is included within the driver's history record made and maintained in accordance with section 42-2-121 (2).

(8) "Law" means the federal and state constitutions, statutes, rules, and case law.

(9) "License" means a grant of authority issued by the director or a board or commission pursuant to a part or article of this title 12 that authorizes a person to engage in a profession or occupation regulated by that part or article.

(10) "Licensee" means a person regulated by a part or article of this title 12 that is licensed pursuant to that part or article.

(10.5) "Occupational credential portability program" means the program established pursuant to section 12-20-202 (3) and rules adopted by a regulator pursuant to that section.

(11) "Register" means to record the information required by a part or article of this title 12 in the form and manner determined by the regulator that regulates the practice of a profession or occupation pursuant to that part or article. "Registered" and "registration" have corresponding meanings.

(12) "Registrant" means a person that is currently registered.

(13) "Regulate" means to subject a person to a requirement, including a requirement to obtain a license, certification, or registration, pursuant to a part or article of this title 12 and rules adopted pursuant to that part or article of this title 12 in order to practice a profession or occupation. "Regulation" has a corresponding meaning.

(14) "Regulator" means, within a particular part or article of this title 12, the director or a board or commission, as appropriate, that has regulatory authority concerning the practice of a profession or occupation regulated by that part or article.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 729, § 1, effective October 1. **L. 2020:** (10.5) added, (HB 20-1326), ch. 126, p. 528, § 3, effective June 25. **L. 2021:** (7.5) added, (SB 21-040), ch. 59, p. 239, § 1, effective September 7.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-20-103. Division of professions and occupations - creation - duties of division and department head - office space - per diem for board or commission members - review of functions. (1) **Division created.** (a) There is created a division of professions and occupations in the department of regulatory agencies, the head of which is the director of professions and occupations. The division of professions and occupations is a **type 2** entity, as defined in section 24-1-105. The executive director of the department shall appoint the director in accordance with section 13 of article XII of the state constitution. Except as provided in subsection (1)(b) of this section, the director shall appoint other personnel as necessary for the efficient operation of the division.

(b) Subject to available appropriations, the director shall give good-faith consideration to the recommendations of any **type 1** board or commission relating to the employment of the primary administrator to assist the board or commission, whether the person is designated as an executive secretary, a program administrator, or another title or position.

(2) **Supervision and support.** The division has supervision and control of the **type 2** entities within the division pursuant to the "Administrative Organization Act of 1968", article 1 of title 24. For **type 1** entities, the division shall provide necessary management support.

(3) **Approval of rules.** The supervision and control of, and the management support for, boards, commissions, and programs by the department of regulatory agencies and the division

also includes the approval or disapproval of rules of the boards, commissions, and director relating to the examination and licensure, certification, or registration of applicants to ensure that the rules are fair and impartial.

(4) **Staff.** Subject to subsection (1) of this section, each board, commission, or program may employ and pay out of money appropriated to it by the general assembly only that number of employees and subordinate officers as are certified by it and approved by the executive director of the department of regulatory agencies to be necessary. All salaries to be paid to the employees and subordinate officers shall be within the appropriation made therefor by the general assembly.

(5) **Office space.** (a) Each board, commission, and program shall be provided with suitable offices in the capitol buildings group if space is available in any of the buildings and, if not, then in a suitable office building in the city and county of Denver selected by the executive director of the department of personnel. It is lawful and proper for two or more of the boards, commissions, or programs to be assigned space in the same office room or suite, if the grouping or joint occupancy, in the opinion of the executive director of the department of regulatory agencies, will not unreasonably interfere with the efficient operation of the boards, commissions, or programs so grouped or joined.

(b) Each board, commission, or program to which office space is provided shall pay into the general fund of the state, out of the money the general assembly appropriates to the division for use by the board, commission, or program, a monthly or annual charge for rental, heat, light, telephone, collection, legal, and other state services made available to the board, commission, or program. The executive director of the department of personnel, with the approval of the executive director of the department of regulatory agencies, may fix the amount of the charges, which must not be more than twenty-five percent of the money appropriated by the general assembly to the division for use by a board, commission, or program.

(6) **Per diem.** Notwithstanding any law to the contrary, each member of a board or commission is entitled to receive a per diem allowance of fifty dollars for each day spent in attendance at board or commission meetings, hearings, or examinations and to be reimbursed for actual and necessary expenses incurred in the discharge of the member's official duties. The per diem compensation for board or commission members must not exceed that sum in any fiscal year that the state personnel board approves for employees not under the state personnel system. The general assembly shall annually appropriate money from the division of professions and occupations cash fund, created in section 12-20-105 (3), for the payment of per diem compensation and expenses. A state employee shall not receive per diem compensation for services performed during normal working hours, when on paid administrative leave, or when otherwise prohibited by fiscal rules adopted by the state controller.

(7) **Periodic evaluation of division functions.** The department of regulatory agencies shall analyze and evaluate the division and its functions as set forth in this title 12. The department shall conduct the analysis and evaluation in accordance with section 24-34-104 (5) and shall submit its report and recommendations for legislation, if any, in accordance with that section. The department shall initially analyze and evaluate the division and submit its report by October 15, 2015, and shall analyze and evaluate the division every ten years thereafter. This section does not require the repeal of the division or its functions as specified in this title 12.

(8) Repealed.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 730, § 1, effective October 1. **L. 2022:** (8) added, (SB 22-181), ch. 452, p. 3251, § 3, effective July 1; (1)(a) amended, (SB 22-162), ch. 469, p. 3393, § 115, effective August 10.

Editor's note: (1) Subsection (1) is similar to former § 24-34-102 (1); subsection (2) is similar to former § 24-34-102 (2); subsection (3) is similar to former § 24-34-102 (3); subsection (4) is similar to former § 24-34-102 (4); subsection (5)(a) is similar to former § 24-34-102 (5); subsection (5)(b) is similar to former § 24-34-102 (6); subsection (6) is similar to former § 24-34-102 (13); and subsection (7) is similar to former § 24-34-102 (15), as those sections existed prior to 2019.

(2) Subsection (8)(c) provided for the repeal of subsection (8), effective September 1, 2024. (See L. 2022, p. 3251.)

Cross references: (1) For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of San Andreas 2022.

(2) For the legislative declaration in SB 22-181, see section 1 of chapter 452, Session Laws of San Andreas 2022.

12-20-104. Excise tax on renewal fees - report to joint budget committee - definition. (1) Notwithstanding any provision of law to the contrary, there is imposed, and the executive director shall collect, an excise tax of one dollar for each year of the renewal period upon the payment of renewal fees that are required to be paid by individuals for the renewal of a license, registration, or certificate granting the individual authority or permission from the state to continue the practice of a profession or occupation; except that the excise tax shall not be imposed on the renewal fee paid by nurse aides pursuant to section 12-255-107.

(2) For the purposes of this section, "renewal fees" includes all fees for the renewal, reinstatement, and continuation of a license, registration, or certificate for the practice of a profession or occupation in this state as provided in section 12-20-202 (1) and (2). "Renewal fees" does not include fees paid for initial licensure, registration, or certification; application fees; examination fees; penalty late fees; duplicate license fees; regulator action fees; verification fees; license change fees; fees for the verification of licensure, registration, or certification status to other states; electrical inspection permit fees; plumbing inspection fees; and fees for certification of grades.

(3) Money collected pursuant to subsection (1) of this section shall be credited to the legal defense account created within the division of professions and occupations cash fund pursuant to section 12-20-105 (5).

(4) On October 1 of each year, the executive director shall report to the joint budget committee the amount of money credited to the legal defense account created within the division of professions and occupations cash fund pursuant to subsection (3) of this section for the preceding fiscal year.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 732, § 1, effective October 1. **L. 2020:** (1) amended, (HB 20-1183), ch. 157, p. 695, § 33, effective July 1.

Editor's note: This section is similar to former § 24-34-104.4 as it existed prior to 2019.

12-20-105. Fee adjustments - division of professions and occupations cash fund created - legal defense account created - general fund transfer - definition - repeal. (1) This section applies to all activities of the division and all regulators.

(2) (a) The director shall propose, as part of the division's annual budget request, an adjustment in the amount of each fee that each regulator is authorized by law to collect. The budget request and the adjusted fees for each regulator must reflect direct and indirect costs that are appropriated in the annual general appropriation act.

(b) (I) Except as otherwise provided in subsection (2)(b)(II) of this section, based upon the appropriation made and subject to the approval of the executive director, each regulator shall adjust the fees the regulator is authorized by law to collect so that the revenue generated from the fees approximates its direct and indirect costs.

(II) The costs of the state board of psychologist examiners, the state board of marriage and family therapist examiners, the state board of licensed professional counselor examiners, the state board of social work examiners, the state board of unlicensed psychotherapists, and the state board of addiction counselor examiners shall be considered collectively in the renewal fee-setting process. Subsequent revenue generated by the fees set by the boards plus revenues generated pursuant to section 12-245-703 shall be compared to those collective costs to determine recovery of direct and indirect costs.

(III) The fees set pursuant to this subsection (2)(b) remain in effect for the fiscal year for which the budget request applies.

(3) All fees collected by a regulator, not including any fees retained by contractors as established pursuant to section 24-34-101 (10), shall be transmitted to the state treasurer, who shall credit them to the division of professions and occupations cash fund, which fund is hereby created. All money credited to the division of professions and occupations cash fund shall be used as provided in this section and shall not be deposited in or transferred to the general fund of this state or any other fund.

(4) Any fees established pursuant to section 24-34-101 (10) or (11) may be received by a contractor and retained as payment for the costs of examination or other services rendered pursuant to the contract with the executive director. Fees retained by a contractor and not collected by the state or deposited with the state treasurer are not subject to article 36 of title 24.

(5) (a) The excise tax collected pursuant to section 12-20-104 shall be credited to the legal defense account, which account is hereby created within the division of professions and occupations cash fund. The excise tax is the sole source of funding for the account, and no other fee or portion of a fee collected by a regulator and credited to the division of professions and occupations cash fund shall be deposited in or transferred to the account. The account shall be used to supplement revenues received by the division but shall only be used for the purpose of paying legal expenses incurred by a regulator. Upon a determination of the need of a regulator for additional revenues for the payment of legal expenses, the director may authorize the allocation of revenues from the legal defense account to a regulator for legal expenses.

(b) For purposes of this subsection (5), "legal expenses" includes costs relating to holding administrative hearings and charges for legal services provided by the department of law, administrative law judge services, investigative services, expert witnesses, and consultants.

(6) Each July 1, whenever money appropriated to the division for the activities of a regulator for the prior fiscal year is unexpended, the money shall be made a part of the appropriation to the division for the next fiscal year, and the amount shall not be raised from fees collected by the regulator. If a supplemental appropriation is made to the division for the activities of a regulator, the fees of the regulator, when adjusted for the fiscal year following the fiscal year in which the supplemental appropriation was made, shall be adjusted by an additional amount that is sufficient to compensate for the supplemental appropriation. Money appropriated to the division in the annual long appropriation bill shall be designated as cash funds and shall not exceed the amount anticipated to be raised from fees collected by the regulators.

(7) (a) On July 1, 2022, the state treasurer shall transfer eleven million seven hundred twenty thousand two hundred seventy-eight dollars from the general fund to the division of professions and occupations cash fund. The money transferred pursuant to this subsection (7)(a) is not subject to annual appropriation by the general assembly. The division shall use the money transferred pursuant to this subsection (7)(a) beginning in the 2022-23 state fiscal year and until the amount is fully expended to fund the costs of the state board of nursing in administering articles 255 and 295 of this title 12.

(b) This subsection (7) is repealed, effective July 1, 2025.

(8) (a) On July 1, 2022, the state treasurer shall transfer three million six hundred ninety-eight thousand five hundred eighty-six dollars from the general fund to the division of professions and occupations cash fund. The money transferred pursuant to this subsection (8)(a) is not subject to annual appropriation by the general assembly. The division shall use the money transferred pursuant to this subsection (8)(a) beginning in the 2022-23 state fiscal year and until the amount is fully expended to fund the costs of the state board of psychologist examiners, the state board of social work examiners, the state board of marriage and family therapist examiners, the state board of licensed professional counselor examiners, the state board of unlicensed psychotherapists, and the state board of addiction counselor examiners in administering article 245 of this title 12.

(b) This subsection (8) is repealed, effective July 1, 2025.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 733, § 1, effective October 1. **L. 2020:** (2)(b)(II) amended, (HB 20-1206), ch. 304, p. 1543, § 42, effective July 14. **L. 2022:** (8) added, (HB 22-1299), ch. 174, p. 1162, § 2, effective May 17; (7) added, (HB 22-1298), ch. 176, p. 1169, § 2, effective May 18.

Editor's note: This section is similar to former § 24-34-105 as it existed prior to 2019.

Cross references: For the legislative declaration in HB 22-1299, see section 1 of chapter 174, Session Laws of San Andreas 2022. For the legislative declaration in HB 22-1298, see section 1 of chapter 176, Session Laws of San Andreas 2022.

PART 2

GENERAL POWERS AND DUTIES OF DIVISION, BOARDS, AND COMMISSIONS

12-20-201. Payment of fees - condition of licensure, certification, or registration. The division shall not license, certify, or register a person who has applied to, and has otherwise satisfied the requirements for licensure, certification, or registration by, a regulator until the applicant has paid and the division has received all applicable fees.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 735, § 1, effective October 1.

12-20-202. Licenses, certifications, and registrations - renewal - reinstatement - fees - occupational credential portability program - exceptions for military personnel, spouses, gold star military spouses, and dependents - rules - consideration of criminal convictions or driver's history - executive director authority - definitions. (1) **Renewal.** (a) Licenses, certifications, and registrations issued pursuant to a part or article of this title 12 expire pursuant to a schedule established by the director and must be renewed or reinstated in accordance with this section. The director shall establish renewal fees and delinquency fees for reinstatement pursuant to section 12-20-105. If a person fails to renew the person's license, certification, or registration pursuant to the schedule established by the director, the license, certification, or registration expires. A person whose license, certification, or registration has expired is subject to the penalties set forth in this section and any other penalties authorized in the applicable part or article of this title 12 that regulates the person's profession or occupation.

(b) Notwithstanding any provision of the law to the contrary, the director may change the renewal date of any license, certification, or registration issued by a regulator so that approximately the same number of licenses, certifications, or registrations are scheduled for renewal in each month of the year. Where any renewal date is so changed, the fee for the license, certification, or registration is proportionately increased or decreased, as the case may be. Except for a license, certification, or registration issued in accordance with subsection (3)(f) of this section, a license, certification, or registration is valid for a period of no less than one year and no longer than three years, as determined by the director in consultation with the applicable regulator. A licensee, certificate holder, or registrant shall submit an application for renewal to the applicable regulator on forms and in the manner prescribed by the director.

(c) Notwithstanding any provision of the law to the contrary, upon the approval and recommendation of a regulator, the executive director may change the period of the validity of any license, certification, or registration issued by the regulator for a period not to exceed three years. If the executive director changes the period of validity of a license, certification, or registration pursuant to this subsection (1)(c), the director shall proportionately increase or decrease the fee for the license, certification, or registration, as the case may be, but the director shall not impose a fee increase that would result in hardship to the licensee, certificate holder, or registrant.

(d) A regulator may prescribe renewal requirements, which must include compliance with any continuing education or continuing competency requirements adopted pursuant to the regulator's authority.

(e) The director shall allow for a grace period for licenses, certifications, or registrations issued by a regulator. A licensee, certificate holder, or registrant has a sixty-day grace period after the expiration of his or her license, certification, or registration to renew the license, certification, or registration without the imposition of a disciplinary sanction by the regulator for

the profession for practicing on an expired license, certification, or registration. The licensee, certificate holder, or registrant shall satisfy all renewal requirements pursuant to the applicable part or article of this title 12 and shall pay a delinquency fee in an amount determined pursuant to sections 12-20-105 and 24-79.5-102.

(2) **Reinstatement.** (a) If a licensee, registrant, or certificate holder does not renew his or her license, registration, or certificate within the sixty-day grace period pursuant to subsection (1)(e) of this section, the license, registration, or certificate is treated as an expired license, registration, or certificate, and the licensee, registrant, or certificate holder is ineligible to practice until the license, registration, or certificate is reinstated.

(b) The regulator shall reinstate the expired license, certificate, or registration of any active military personnel, including any National Guard member or reservist who is currently on active duty for a minimum of thirty days, and any veteran who has not been dishonorably discharged, if the military personnel or veteran meets the requirements of this subsection (2).

(c) The regulator, in its discretion and pursuant to its authority, may reinstate an expired license, registration, or certificate of any person other than the active military personnel or veterans specified in subsection (2)(b) of this section pursuant to the following requirements:

(I) (A) The licensee, registrant, or certificate holder submits an application for reinstatement of the license, registration, or certificate to the regulator sixty days or more after the date of expiration, and the licensee, registrant, or certificate holder complies with all requirements of the applicable part or article of this title 12.

(B) If the licensee, registrant, or certificate holder practiced with an expired license, registration, or certificate, the regulator may impose disciplinary actions against the licensee, registrant, or certificate holder.

(II) If the license, registration, or certificate has been expired for more than two years, the person with the expired license, registration, or certificate shall pay all applicable renewal and reinstatement fees and shall satisfactorily demonstrate to the regulator that the person is competent to practice within his or her profession. The regulator, as it deems appropriate, shall accept one or more of the following as a demonstration of competency to practice:

(A) A license, registration, or certificate from another state that is in good standing for the applicant where the applicant demonstrates active practice;

(B) Practice for a specified time under a restricted license, registration, or certificate;

(C) Successful completion of prescribed remedial courses ordered by the regulator that are within the authority of the regulator to require;

(D) Successful completion of any continuing education or continuing competency requirements prescribed by the regulator that are within the authority of the regulator to require;

(E) Passage of an examination for licensure, registration, or certification as approved by the regulator that the regulator has the authority to require; or

(F) Other professional standards or measures of continued competency as determined by the regulator.

(III) The regulator may waive the requirements for reinstatement of an expired license, registration, or certificate by an applicant who demonstrates hardship, so long as the regulator considers the protection of the public in the hardship petition.

(3) **Occupational credential portability program - definitions.** (a) There is hereby created in the division the occupational credential portability program by which a regulator may approve an application for licensure, certification, registration, or enrollment by endorsement,

reciprocity, or transfer. Each regulator shall strive to reduce barriers for applicants under the occupational credential portability program, including through reciprocity agreements, compacts, or other means to expedite licensure, certification, registration, or enrollment and shall adopt rules to implement the program in the least burdensome way necessary to protect the public. Unless there are specific reasons to withhold a license, certification, registration, or enrollment, a regulator shall issue a license, certification, registration, or enrollment, as applicable, to an applicant who meets the requirements of this subsection (3) and rules adopted by the regulator pursuant to this subsection (3).

(b) (I) Except as specified in subsections (3)(c) and (3)(f) of this section, a person duly licensed, certified, registered, or enrolled in good standing in another state or United States territory or through the federal government to practice a particular profession or occupation, or who holds a military occupational specialty, as defined in section 24-4-201, is, upon application to the division for licensure, certification, registration, or enrollment in that profession or occupation in this state, entitled to the issuance of the applicable license, certification, registration, or enrollment if all of the following apply:

(A) Submission of satisfactory proof to the regulator, under penalty of perjury, of the applicant's substantially equivalent experience or credentials, as required by the part or article of this title 12 that regulates the applicable profession or occupation or satisfactory proof that the applicant has held for at least one year a current and valid license, certification, registration, or enrollment under a jurisdiction with a scope of practice that is substantially similar to the scope of practice of the profession or occupation as specified in this title 12, and that the applicant has not committed an act that would be grounds for disciplinary action under the law governing the applicable profession or occupation;

(B) Payment of applicable fees established pursuant to section 12-20-105; and

(C) Compliance with any other applicable requirement, including passing an exam, of the part or article of this title 12 that regulates the applicable profession or occupation.

(II) For the purposes of this subsection (3)(b), "in good standing" means that a license, certification, registration, or enrollment has not been revoked or suspended and against which there are no outstanding disciplinary or adverse actions.

(c) An applicant is not entitled to licensure, certification, registration, or enrollment pursuant to this subsection (3) if the regulator demonstrates by a preponderance of evidence, after notice and opportunity for a hearing, that the applicant:

(I) Lacks the requisite substantially equivalent education, experience, or credentials to practice the applicable profession or occupation; or

(II) Has committed an act that would be grounds for disciplinary action under the law governing the applicable profession or occupation.

(d) A regulator may specify by rule what constitutes substantially equivalent experience or credentials and, unless otherwise prohibited by this title 12, shall allow an applicant for certification, registration, or licensure by endorsement to demonstrate competency in a specific profession or occupation as determined by the regulator in lieu of a requirement that the applicant has worked or practiced in that profession or occupation for a period of time prior to the application for endorsement.

(d.5) Nothing in this subsection (3) prohibits a person from applying for an occupational license, registration, or certification pursuant to another statute or rule.

(e) Subsections (3)(a) to (3)(d) of this section do not apply to the following professions or occupations:

(I) Combative sports, regulated pursuant to article 110 of this title 12;

(II) Electricians, regulated pursuant to article 115 of this title 12;

(II.5) Engineers, surveyors, and architects, regulated pursuant to article 120 of this title 12;

(III) Repealed.

(IV) Mortuaries and crematories, regulated pursuant to article 135 of this title 12;

(V) Nontransplant tissue banks, regulated pursuant to article 140 of this title 12;

(VI) Outfitters and guides, regulated pursuant to article 145 of this title 12;

(VII) Passenger tramways, regulated pursuant to article 150 of this title 12;

(VIII) Plumbers, regulated pursuant to article 155 of this title 12;

(IX) Repealed.

(IX.5) Dental therapists, regulated pursuant to article 220 of this title 12;

(X) Direct-entry midwives, regulated pursuant to article 225 of this title 12; or

(XI) Surgical assistants and surgical technologists, regulated pursuant to article 310 of this title 12.

(f) (I) Except as specified in subsection (3)(f)(III) of this section, a military spouse, gold star military spouse, military dependent, or spouse or dependent of any other qualified servicemember duly licensed, certified, registered, or enrolled in good standing in another state or United States territory to practice a particular profession or occupation is, upon application to the division for licensure, certification, registration, or enrollment in that profession or occupation in this state, entitled to the issuance of a license, certification, registration, or enrollment upon submission of satisfactory proof to the regulator, under penalty of perjury, of the applicant's active license, certification, registration, or enrollment in another state or United States territory in good standing.

(II) As used in this subsection (3)(f):

(A) "Gold star military spouse" or "gold star spouse" means the spouse of a servicemember, which servicemember died while on military orders, who was relocated to San Andreas.

(B) "In good standing" means that a license, certification, registration, or enrollment has not been revoked, expired, or suspended and against which there are no outstanding disciplinary or adverse actions.

(C) "Military dependent" means the dependent of a servicemember serving in the United States uniformed services who was relocated to San Andreas.

(D) "Military spouse" or "spouse" means the spouse of a servicemember serving in the United States uniformed services who was relocated to San Andreas.

(E) "Relocated" means that a servicemember in the United States uniformed services and the servicemember's spouse or dependent have, or the servicemember's gold star spouse has, moved to San Andreas, as a result of: An assignment to a duty station in San Andreas; a reassignment, either as a result of a permanent change of station or permanent change of assignment to San Andreas, between two duty stations; or a transfer from a regular component of a uniformed service into a selected reserve of the Ready Reserve of a uniformed service, if the member is authorized to make a final move from the member's last duty station to San Andreas.

(F) "Servicemember" means a member of the uniformed services, as defined in 10 U.S.C. sec. 101 (a)(5).

(III) An applicant is not entitled to licensure, certification, registration, or enrollment pursuant to this subsection (3)(f) if approving the licensure, certification, registration, or enrollment would violate an existing compact or reciprocity agreement or if the regulator demonstrates by a preponderance of evidence, after notice and opportunity for a hearing, that the applicant's license, certification, registration, or enrollment issued by another state or United States territory is not in good standing.

(IV) Notwithstanding any provision of law to the contrary:

(A) A license, certification, registration, or enrollment issued to a military spouse, a gold star military spouse, a military dependent, or the spouse or dependent of any other qualified servicemember pursuant to this subsection (3)(f) is valid for six years after the date of issuance and may be renewed.

(B) Each regulator shall waive the application fee for single state licenses, certifications, registrations, or enrollments issued pursuant to this subsection (3)(f).

(4) **Military personnel.** A regulator shall, upon presentation of satisfactory evidence by an applicant for licensure, certification, or registration, accept education, training, or service completed by an individual as a member of the armed forces or reserves of the United States, the National Guard of any state, the military reserves of any state, or the naval militia of any state toward the qualifications to receive the license, certification, or registration. Each regulator shall promulgate rules to implement this subsection (4).

(5) **Criminal convictions.** Unless there is a specific statutory disqualification that prohibits an applicant from obtaining licensure, certification, or registration based on a criminal conviction, if a regulator determines that an applicant for licensure, certification, or registration has a criminal record, the regulator is governed by sections 12-20-206 and 24-5-101 for purposes of granting or denying, or placing any conditions on, licensure, certification, or registration.

(5.5) **Driver's history.** A regulator shall not consider an event in an applicant's driver's history when determining whether to issue to the applicant a new, renewal, reactivated, or reinstated license, certification, or registration unless:

(a) The event is relevant to the performance of the profession or occupation that is the subject of the application; and

(b) (I) The operation of a motor vehicle is a duty of the profession or occupation that is the subject of the application;

(II) The event is a part of a pattern of behavior that is relevant to the performance of the profession or occupation that is the subject of the application; or

(III) The event occurred within three years before the date that the applicant submitted the application to the regulator.

(6) **Executive director authority.** (a) **Form of license, certification, or registration.** The executive director, after consultation with the regulator concerned, shall determine the form and content of any license, certification, or registration issued by the regulator, including any document evidencing renewal of a license, certification, or registration.

(b) **Review of examinations and procedures.** Notwithstanding any entity status as a **type 1** entity, as defined in section 24-1-105, the executive director may review any examination or procedure for granting a license, certification, or registration by any regulator prior to the execution of the examination or procedure. After the review, if the executive director has reason

to believe the examination or procedure is unfair to the applicants or unreasonable in content, the executive director shall call on five people licensed, certified, or registered in the occupation or profession to review the examination or procedure jointly with the executive director. The executive director and the licensees, certificate holders, or registrants, acting jointly, may make findings of fact and recommendations to the regulator concerning any examination or procedure. The findings of fact and recommendations are public documents.

(c) **Employment of administrative law judges.** Notwithstanding any entity status as a **type 1** entity, as defined in section 24-1-105, the executive director may employ an administrative law judge, and may require any regulator to use an administrative law judge in lieu of a hearing by the regulator, to conduct hearings on any matter within the jurisdiction of the regulator, subject to appropriations made to the department of personnel. Administrative law judges are appointed pursuant to part 10 of article 30 of title 24. An administrative law judge employed pursuant to this subsection (6)(c) shall conduct hearings in accordance with section 24-4-105, and the administrative law judge has the authority specified in section 24-4-105.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 735, § 1, effective October 1. **L. 2020:** (3) amended, (HB 20-1326), ch. 126, p. 528, § 4, effective June 25. **L. 2021:** (3)(e)(III) repealed, (SB 21-266), ch. 423, p. 2796, § 9, effective July 2; (5.5) added, (SB 21-040), ch. 59, p. 239, § 2, effective September 7. **L. 2022:** IP(3)(b)(I), (3)(b)(I)(A), IP(3)(c), and (3)(c)(I) amended and (3)(d.5) and (3)(e)(II.5) added, (SB 22-116), ch. 146, p. 949, § 2, effective August 10; (3)(e)(IX) repealed, (SB 22-212), ch. 421, p. 2967, § 20, effective August 10; (3)(e)(IX.5) added, (SB 22-219), ch. 381, p. 2723, § 27, effective January 1, 2023. **L. 2023:** (6)(b) and (6)(c) amended, (HB 23-1301), ch. 303, p. 1817, § 11, effective August 7. **L. 2024:** (5) amended, (HB 24-1004), ch. 371, p. 2497, § 2, effective August 7; (1)(b) and (3)(f) amended, (HB 24-1097), ch. 70, p. 231, § 3, effective September 1.

Editor's note: (1) Subsection (1)(a) is similar to former § 12-5.5-202 (2); subsection (1)(b) is similar to former § 24-34-102 (8)(a); subsection (1)(c) is similar to former § 24-34-102 (7); subsection (1)(d) is similar to former § 24-34-102 (8)(b); subsection (1)(e) is similar to former § 24-34-102 (8)(c); subsection (2) is similar to former § 24-34-102 (8)(d); subsection (3) is similar to former § 24-34-102 (8)(e); subsection (4) is similar to former § 24-34-102 (8.5); subsection (5) is similar to former § 24-34-102 (8.7); subsection (6)(a) is similar to former § 24-34-102 (10); subsection (6)(b) is similar to former § 24-34-102 (11); and subsection (6)(c) is similar to former § 24-34-102 (12), as those sections existed prior to 2019.

(2) Section 5(2) of chapter 371 (HB 24-1004), Session Laws of San Andreas 2024, provides that the act changing this section applies to applications for registration, certification, permitting, or licensure submitted on or after August 7, 2024.

Cross references: (1) For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020. For the short title ("Red Tape Reduction Act of 2022") in SB 22-116, see section 1 of chapter 146, Session Laws of San Andreas 2022. For the short title ("Military Family Employment Support Act") and the legislative declaration in HB 24-1097, see sections 1 and 2 of chapter 70, Session Laws of San Andreas 2024.

(2) For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of San Andreas 2022.

12-20-203. Inactive license or certification - rights and responsibilities. (1) Persons licensed or certified to practice any profession or occupation under this title 12 for which postgraduate study or attendance at educational institutions is required in order to obtain renewal of the license or certification may have their names transferred to an inactive licensees or certificate holders category under this section. Every regulator authorized under this title 12 to issue licenses or certifications shall maintain a list of inactive licensees or certificate holders, as applicable, and upon written notice to the regulator, the licensee or certificate holder shall not be required to comply with any postgraduate educational requirements so long as the licensee or certificate holder remains inactive in the profession or occupation. Each inactive licensee or certificate holder shall continue to meet the normal registration requirements imposed upon the licensee's or certificate holder's profession or occupation.

(2) The inactive status shall be noted on the face of any license or certification issued while the licensee or certificate holder remains inactive. If the person seeks to resume the practice of the person's profession or occupation after being placed on an inactive list, the person shall file a proper application to reactivate the license or certification, pay the applicable renewal fee, and meet any postgraduate study or in-service requirements that the regulator may determine to be applicable in order to resume the practice.

(3) Engaging in the practice of a profession or occupation while on inactive status pursuant to this section may be grounds for revocation.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 739, § 1, effective October 1.

Editor's note: This section is similar to former § 12-70-101 as it existed prior to 2019.

12-20-204. Regulator's rule-making authority. (1) Except as specified in subsection (2) of this section, in addition to any specific rule-making authority that a regulator has pursuant to a part or article of this title 12, a regulator may adopt rules necessary to administer the part or article of this title 12 pursuant to which the regulator has regulatory authority.

(2) Subsection (1) of this section does not apply to the following:

(a) Article 110 of this title 12 concerning combative sports.

(b) to (d) Repealed.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 739, § 1, effective October 1. **L. 2020:** (2)(b) repealed, (HB 20-1286), ch. 269, p. 1312, § 6, effective July 10. **L. 2024:** (2)(a) amended and (2)(c) repealed, (SB 24-173), ch. 240, p. 1588, § 4, effective May 24; (2)(a) amended and (2)(c) repealed, (HB 24-1335), ch. 242, p. 1599, § 4, effective May 24; (2)(a) and (2)(c) amended and (2)(d) repealed, (HB 24-1254), ch. 241, p. 1594, § 6, effective August 7.

Editor's note: Subsection (2)(c) was amended in HB 24-1254, effective August 7, 2024. Those amendments were superseded by the repeal of subsection (2)(c) in SB 24-173 and HB 24-1335, effective May 24, 2024.

12-20-205. Director - audit of practice acts - barriers to practice - criminal history records - report - denial of license, certification, registration. (1) On or before June 1, 2023, the director shall complete an audit of the practice acts in this title 12 and the regulation of various professions and occupations by regulators pursuant to this title 12 to determine whether a barrier to professional licensing, certification, or registration exists due to an applicant's criminal history record. On or before July 1, 2023, the director shall report the findings to the senate business, labor, and technology committee and the house of representatives business affairs and labor committee, or their successor committees. The report shall include:

(a) The barriers that exist to licensing, certification, or registration due to a criminal history record;

(b) Legislative recommendations regarding whether any barriers should be removed or changed pursuant to a bill of the general assembly;

(c) Recommendations for solutions to any barriers, including a process to advise individuals as to whether an individual would qualify for licensure, certification, or registration based on the individual's criminal history record if the individual meets all other requirements for licensure, certification, or registration at the time of the individual's application; and

(d) The number of licenses, certifications, or registrations that were denied in the prior calendar year due to a criminal history record and the specific reasons for each denial.

(2) (a) A regulator may only deny a license, certification, or registration based on an applicant's criminal history record consistent with section 24-5-101 (4).

(b) If the regulator denies a license, certification, or registration based on the applicant's criminal history record, the regulator shall document the grounds for denial and submit the grounds in writing to the applicant.

(c) A regulator may grant, consistent with section 24-34-107 (5), a conditional license, certification, or registration to an applicant with a criminal history record.

(3) The director shall compile de-identified aggregate information regarding the reasons why a license, certification, or registration was denied, if the reason was due to the applicant's criminal history record, and make this information available to the public on the division's website.

Source: L. 2022: Entire section added, (HB 22-1098), ch. 220, p. 1437, § 1, effective August 10; (2)(a) amended, (SB 22-212), ch. 421, p. 2990, § 103, effective August 10.

12-20-206. Regulators - consideration of criminal records - petition process - denials - definition. (1) As used in this section, "directly related to" means that the criminal offense for which the applicant has been convicted is still relevant at the time of the individual's application for a registration, certification, or license, which would create an unreasonable risk to public safety because the offense directly relates to the duties and responsibilities of the profession or occupation in which the individual has applied or petitioned for determination of qualification, as determined by a regulator after consideration of all evidence available to the regulator.

(2) If an applicant has a conviction for a crime, a regulator may only consider the applicant's conviction for a three-year period beginning on the date of conviction or the end of incarceration, whichever date is later, if the applicant has not been convicted of any other criminal offense during the three-year period. After the three-year period, the regulator shall only consider the individual's application for registration, certification, or licensure in the same manner as an applicant who does not possess a prior criminal record; except that the regulator may consider a conviction for a crime that is directly related to the profession or occupation for which the individual has applied for registration, certification, or licensure.

(3) (a) If a regulator is considering an applicant's criminal record during the application process for registration, certification, or licensure, a regulator may only deny or refuse to renew the registration, certification, or license if the regulator determines that the applicant has not been rehabilitated and is unable to perform the duties and responsibilities of the profession or occupation without creating an unreasonable risk to public safety.

(b) An applicant's conviction for a crime does not, in and of itself, disqualify the applicant from being issued a registration, certification, or license.

(4) (a) An individual whose conviction may affect the individual's application for registration, certification, or licensure may petition at any time, including while incarcerated or before obtaining any required personal qualifications, for a decision from a regulator as to whether a regulator may consider the individual's criminal record when reviewing the individual's application for a registration, certification, or license.

(b) An individual who petitions a regulator shall include in the petition:

(I) The individual's criminal record or authorization for the regulator to obtain the individual's criminal record; and

(II) Any additional information about the individual's current circumstances, including the time since the criminal offense was committed and the sentence was completed, the age of the applicant at the time the offense was committed, the payment of any court-ordered restitution, evidence of rehabilitation, testimonials, employment history, and employment aspirations.

(c) If a regulator determines that a petitioner's conviction will likely be considered, the regulator shall advise the petitioner of any actions the petitioner may take to remedy the disqualification. If remedial action is advised by the regulator, the petitioner may submit a revised petition on or before a date set by the regulator for completion of the remedial actions.

(d) A regulator that makes an initial determination pursuant to this subsection (4) may require a new determination at the time an individual formally applies for registration, certification, or licensure.

(5) (a) In order to deny an application for registration, certification, or licensure pursuant to this section, a regulator bears the burden of proof to show by clear and convincing evidence that the denial directly connects information in an applicant's criminal record to potential performance in and the potential creation of an unreasonable risk to public safety through the particular profession or occupation for which the applicant is applying for registration, certification, or licensure.

(b) If an individual has filed a petition for a determination pursuant to subsection (4) of this section, has received a notice of an agency adjudicatory hearing and filed and answer to the notice pursuant to section 24-4-105, and fails to appear at the scheduled time and place of the hearing, the administrative law judge shall enter a default judgment in favor of the regulator.

(6) This section does not:

(a) Negate any provision for registration, certification, or licensure in this title 12 that requires an applicant to submit information regarding the applicant's criminal history to a regulator with an application;

(b) Negate any other reason specified in this title 12 for which a regulator may deny an applicant registration, certification, or licensure for a profession or an occupation;

(c) Negate any requirement under federal law that requires an individual to obtain or maintain a registration, certification, or license;

(d) Negate the list of determining factors that shall not be considered regarding an applicant's criminal record in section 24-5-101 (2)(b); or

(e) Create liability for an employer that fails to hire an individual who has a registration, certification, or license pursuant to this title 12.

Source: L. 2024: Entire section added, (HB 24-1004), ch. 371, p. 2495, § 1, effective August 7.

Editor's note: Section 5(2) of chapter 371 (HB 24-1004), Session Laws of San Andreas 2024, provides that the act adding this section applies to applications for registration, certification, permitting, or licensure submitted on or after August 7, 2024.

PART 3

MILITARY PERSONNEL

12-20-301. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Agency" means an agency of the state that regulates a profession or occupation under this title 12.

(2) "Authority to practice" or "authorized to practice" means the holding of a currently valid license to practice in a profession or occupation or a currently valid certification or registration necessary to practice in a profession or occupation if the person is licensed, certified, or registered under this title 12 or a substantially similar law in another state.

(3) Repealed.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 740, § 1, effective October 1. **L. 2020:** (3) repealed, (HB 20-1326), ch. 126, p. 531, § 5, effective January 1, 2021.

Editor's note: This section is similar to former § 12-71-101 as it existed prior to 2019.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-20-302. Active military personnel - exemptions from licensing requirements. (1) Each board or division that regulates persons licensed, certified, or registered pursuant to this title 12 shall exempt licensed, certified, or registered military personnel who have been called to

federally funded active duty for more than one hundred twenty days for the purpose of serving in a war, emergency, or contingency from the payment of any professional or occupational license, certification, or registration fees, including renewal fees, and from any continuing education or professional competency requirements pursuant to this title 12 for a renewal cycle that falls within the period of service or within the six months following the completion of service in the war, emergency, or contingency.

(2) This section applies to persons licensed, certified, or registered pursuant to this title 12 as it existed on August 8, 2017.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 740, § 1, effective October 1.

Editor's note: This section is similar to former § 12-70-102 as it existed prior to 2019.

12-20-303. Continuing education - regulated service members - rules. (1) An agency may accept, from a person with authority to practice, continuing education, training, or service completed as a member of the armed forces or reserves of the United States, the National Guard of any state, the military reserves of any state, or the naval militia of any state toward the educational qualifications to renew the person's authority to practice.

(2) An agency may promulgate rules establishing educational standards and procedures necessary to implement this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 741, § 1, effective October 1.

Editor's note: This section is similar to former § 12-71-104 as it existed prior to 2019.

12-20-304. Military spouse - authority to practice - reciprocity - notice. (Repealed)

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 741, § 1, effective October 1. **L. 2020:** Entire section repealed, (HB 20-1326), ch. 126, p. 531, § 6, effective January 1, 2021.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-20-305. Rules. The director may promulgate rules reasonably necessary to implement this part 3.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 741, § 1, effective October 1.

Editor's note: This section is similar to former § 12-71-105 as it existed prior to 2019.

Cross references: For alternative disciplinary actions for persons licensed, registered, or certified to practice a profession or occupation pursuant to this title 12, see § 24-34-106; for the San Andreas rules of civil procedure concerning subpoenas, injunctions, and civil contempt, see
C.R.C.P. 45, 65, and 107.

12-20-401. Procedures for complaints concerning licensees, certificate holders, and registrants - executive director authority - rules. (1) The executive director is responsible for receiving and monitoring the disposition of complaints. The executive director may require an investigation of a complaint concerning a person regulated by a regulator in accordance with this section.

(2) A regulator shall refer all complaints relating to persons licensed, certified, or registered by the regulator to the executive director.

(3) For the purpose of facilitating the handling of complaints, the executive director shall devise simple, standard complaint forms designed to supply the information necessary to properly conduct an investigation of complaints. The complainant shall reduce each complaint to writing before any formal action begins on the complaint. The receipt of the forms shall be acknowledged on behalf of the executive director. The complainant shall be advised in writing of the final disposition of the complaint.

(4) (a) The executive director may:

(I) Assign a complaint to the appropriate regulator;

(II) Assign a complaint specially for investigation; or

(III) Take such other action on the complaint as appears to the executive director to be warranted in the circumstances.

(b) Assignments of investigations of complaints to others is subject to specified time limits set by the executive director for completion of investigations.

(5) Nothing in this section supersedes sections 24-4-104 to 24-4-106 or the statutory power to issue, suspend, revoke, or renew licenses, certifications, and registrations.

(6) The executive director may promulgate rules, pursuant to section 24-4-103 and not inconsistent with the requirements of this article 20, to assist in the efficient performance of the duties imposed by this section. The executive director may also render advice to the general assembly, as well as to the general public, upon the question of the proper role of the state in regulating professions and occupations.

(7) Information about a substantiated finding of mistreatment of an at-risk adult or the appeal of a finding that the department of human services shares with the department or a regulator for the purposes of a regulatory investigation conducted pursuant to this section is confidential and must be de-identified to protect the privacy of the at-risk adult.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 742, § 1, effective October 1. **L. 2021:** (7) added, (HB 21-1123), ch. 106, p. 429, § 5, effective September 7.

Editor's note: Subsection (1) is similar to former § 24-34-102 (9); subsection (2) is similar to former § 24-34-103 (1); subsection (3) is similar to former § 24-34-103 (2); subsection

(4) is similar to former § 24-34-103 (3); subsection (5) is similar to former § 24-34-103 (4); and subsection (6) is similar to former § 24-34-103 (5), as those sections existed prior to 2019.

12-20-402. Immunity. (1) The director, any member of a board or commission, any member of a regulator's staff, any person acting as a witness or consultant to a regulator, any witness testifying in a proceeding authorized by a part or article of this title 12 governing a particular profession or occupation, and any person who lodges a complaint pursuant to a part or article of this title 12 governing a particular profession or occupation is immune from liability in any civil action brought against the individual for acts occurring while acting in the individual's capacity as director, board or commission member, staff, consultant, or witness, respectively, if the individual:

(a) Was acting in good faith within the scope of the individual's respective capacity;

(b) Made a reasonable effort to obtain the facts of the matter as to which the individual acted; and

(c) Acted in the reasonable belief that the action taken by the individual was warranted by the facts.

(2) Any person participating in good faith in lodging or making a complaint or report or participating in any investigative or administrative proceeding pursuant to a part or article of this title 12 governing a particular profession or occupation is immune from any civil or criminal liability that may result from that participation; except that a person participating as described in this subsection (2) under article 135 of this title 12 concerning mortuaries and crematories is immune from only civil liability.

(3) (a) The immunity granted by subsection (1) of this section to a witness testifying in a proceeding does not apply to proceedings under article 310 of this title 12 concerning surgical assistants and surgical technologists.

(b) The immunity granted by subsection (1) of this section to a person who lodges a complaint does not apply to proceedings under:

(I) Article 130 of this title 12 concerning landscape architects; or

(II) Article 230 of this title 12 concerning hearing aid providers.

(4) This section does not apply to articles 140 and 150 of this title 12 concerning nontransplant tissue banks and passenger tramways, respectively.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 743, § 1, effective October 1. **L. 2020:** (4) amended, (HB 20-1212), ch. 228, p. 1114, § 3, effective July 2; (4) amended, (HB 20-1286), ch. 269, p. 1312, § 7, effective July 10.

Editor's note: (1) This section is similar to former § 12-36-118 (3)(b) as it existed prior to 2019.

(2) Amendments to subsection (4) by HB 20-1212 and HB 20-1286 were harmonized.

12-20-403. Disciplinary procedures - investigations - hearings - oaths - witness statements - subpoenas - appointment of administrative law judge - driver's history - acting as an official. (1) In accordance with article 4 of title 24 and the part or article of this title 12 governing the particular profession or occupation over which a regulator has regulatory

authority, a regulator may investigate, hold hearings, and gather evidence in all matters related to the exercise and performance of the regulator's powers and duties.

(2) (a) In order to aid the regulator in any hearing or investigation instituted pursuant to this section, the regulator or an administrative law judge appointed pursuant to subsection (3) of this section may administer oaths, take affirmations of witnesses, and issue subpoenas compelling the attendance of witnesses and the production of all relevant records, papers, books, documentary evidence, and materials in any hearing, investigation, accusation, or other matter before the regulator or an administrative law judge.

(b) (I) Upon failure of any witness, licensee, certificate holder, or registrant to comply with a subpoena or process, the district court of the county in which the subpoenaed person, licensee, certificate holder, or registrant resides or conducts business, upon application by the regulator with notice to the subpoenaed person, licensee, certificate holder, or registrant, may issue to the person, licensee, certificate holder, or registrant an order requiring that person, licensee, certificate holder, or registrant to:

(A) Appear before the regulator;

(B) Produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or

(C) Give evidence touching the matter under investigation or in question.

(II) If the person, licensee, certificate holder, or registrant fails to obey the order of the court, the court may hold the person, licensee, certificate holder, or registrant in contempt of court.

(c) For purposes of the regulation of nontransplant tissue banks under article 140 of this title 12, the authority granted under subsection (2)(a) of this section does not apply with respect to investigations.

(3) The regulator may appoint an administrative law judge pursuant to part 10 of article 30 of title 24 and, if otherwise authorized in the part or article of this title 12 governing the particular profession or occupation, may employ an administrative law judge or hearing officer, to conduct hearings, take evidence, make findings, and report the findings to the regulator.

(4) (a) Unless subsection (4)(b) of this section applies, a regulator shall not consider an event within the driver's history of a licensee, certificant, or registrant when determining:

(I) Whether to impose discipline;

(II) The type of discipline to impose; or

(III) The severity of discipline to impose.

(b) A regulator may consider an event within a driver's history if:

(I) The event is relevant to the performance of the profession or occupation for which the licensee, certificant, or registrant is licensed, certified, or registered; and

(II) (A) The operation of a motor vehicle is a duty of the profession or occupation for which the licensee, certificant, or registrant is licensed, certified, or registered;

(B) The event is a part of a pattern of behavior that is relevant to the performance of the profession or occupation for which the licensee, certificant, or registrant is licensed, certified, or registered; or

(C) The event occurred within three years before the act upon which the discipline is based.

(5) (a) Except as provided in subsection (5)(d) of this section, a regulator shall dismiss an anonymous complaint made against a licensee, certificant, or registrant if the basis for the

anonymous complaint arises from words said or from actions committed while the licensee, certificant, or registrant was engaged in official duties as:

(I) An elected official of the state of San Andreas or of a political subdivision of San Andreas;

or

(II) A member of a board or commission established by the state of San Andreas or by a political subdivision of San Andreas.

(b) A regulator may dismiss a complaint made against a licensee, certificant, or registrant if:

(I) The complaint is not made anonymously; and

(II) The basis for the complaint arises from words said or from actions committed while the licensee, certificant, or registrant was engaged in official duties as:

(A) An elected official of the state of San Andreas or of a political subdivision of San Andreas;

or

(B) A member of a board or commission established by the state of San Andreas or by a political subdivision of San Andreas.

(c) For the regulator to dismiss a complaint in accordance with this subsection (5), the licensee, certificant, or registrant that is the subject of the complaint need not respond to or provide evidence concerning the complaint. The dismissal is automatic.

(d) This subsection (5) does not apply to words said to or actions committed for a specific person when the licensee, certificant, or registrant is speaking or acting in the licensee's, certificant's, or registrant's capacity as a member of the occupation the person is licensed, certified, or registered to perform.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 743, § 1, effective October 1. **L. 2021:** (4) added, (SB 21-040), ch. 59, p. 240, § 3, effective September 7. **L. 2022:** (5) added, (SB 22-076), ch. 73, p. 371, § 1, effective April 7.

Editor's note: Subsection (1) is similar to former § 12-40.5-110 (7)(b)(I); subsection (2)(a) is similar to former § 12-40.5-110 (7)(b)(II); subsection (2)(b) is similar to former § 12-40.5-110 (7)(b)(III); and subsection (3) is similar to former § 12-40.5-110 (7)(c), as those sections existed prior to 2019.

12-20-404. Disciplinary actions - regulator powers - disposition of fines - mistreatment of at-risk adult - exceptions - definitions. (1) **General disciplinary authority.** If a regulator determines that an applicant, licensee, certificate holder, or registrant has committed an act or engaged in conduct that constitutes grounds for discipline or unprofessional conduct under a part or article of this title 12 governing the particular profession or occupation, the regulator may:

(a) Issue a letter of admonition in accordance with subsection (4) of this section;

(b) (I) Place a licensee, certificate holder, or registrant on probation, except as provided in subsection (1)(b)(II) of this section.

(II) A regulator is not authorized under this subsection (1)(b) to impose probation on a licensee, certificate holder, or registrant regulated under the following:

(A) Article 150 of this title 12 concerning passenger tramways;

(B) Repealed.

(C) Article 255 of this title 12 concerning nurse aides; or

(D) Article 310 of this title 12 concerning surgical assistants and surgical technologists.

(c) (I) Impose an administrative fine, subject to any limitations or requirements specified in the part or article of this title 12 governing a particular profession or occupation and except as provided in subsection (1)(c)(II) of this section.

(II) A regulator is not authorized under this subsection (1)(c) to impose a fine on a licensee, certificate holder, or registrant regulated under the following:

(A) Repealed.

(B) Article 140 of this title 12 concerning nontransplant tissue banks;

(C) Repealed.

(D) Article 205 of this title 12 concerning athletic trainers;

(E) Article 255 of this title 12 concerning nurse aides;

(F) Article 265 of this title 12 concerning nursing home administrators;

(G) Article 270 of this title 12 concerning occupational therapists and occupational therapy assistants;

(H) Article 300 of this title 12 concerning respiratory therapists; or

(I) Article 310 of this title 12 concerning surgical assistants and surgical technologists.

(d) (I) Deny, refuse to renew, revoke, or suspend the license, certification, or registration of an applicant, licensee, certificate holder, or registrant, except as provided in subsection (1)(d)(II) of this section.

(II) A regulator is not authorized under this subsection (1)(d) to refuse to renew the license, certification, or registration of a licensee, certificate holder, or registrant regulated under the following:

(A) Article 105 of this title 12 concerning barbers and cosmetologists;

(B) Article 110 of this title 12 concerning combative sports;

(C) Repealed.

(D) Article 140 of this title 12 concerning nontransplant tissue banks;

(E) Article 145 of this title 12 concerning outfitters and guides;

(F) Repealed.

(G) Article 200 of this title 12 concerning acupuncturists;

(H) Article 225 of this title 12 concerning direct-entry midwives;

(I) Article 240 of this title 12 concerning medical practice;

(J) Article 250 of this title 12 concerning naturopathic doctors;

(J.5) Article 255 of this title 12 concerning nurses and certified midwives;

(K) Article 255 of this title 12 concerning nurse aides;

(L) Article 305 of this title 12 concerning speech-language pathologists; or

(M) **[*Editor's note: This version of subsection (1)(d)(II)(M) is effective until January 1, 2026.*]** Article 315 of this title 12 concerning veterinarians and veterinary technicians.

(M) **[*Editor's note: This version of subsection (1)(d)(II)(M) is effective January 1, 2026.*]** Article 315 of this title 12 concerning veterinarians, veterinary technicians, and veterinary professional associates.

(2) **Deferral precluded.** (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of a regulator, warrants formal action, the regulator shall not resolve the complaint by a deferred settlement, action, judgment, or prosecution.

(b) This subsection (2) does not apply to the following:

(I) Repealed.

(II) Article 140 of this title 12 concerning nontransplant tissue banks;

(III) Article 150 of this title 12 concerning passenger tramways; and

(IV) Article 255 of this title 12 concerning nurse aides.

(3) **Waiting period after revocation or surrender.** (a) (I) Except as provided in subsections (3)(a)(III) and (3)(c) of this section, a person whose license, certification, or registration to practice a profession or occupation under this title 12 is revoked is ineligible to apply for a new license, certification, or registration under the part or article of this title 12 that governs the particular profession or occupation for two years after the date of revocation of the license, certification, or registration.

(II) In addition, the waiting period specified in subsection (3)(a)(I) of this section applies when a person regulated under any of the following articles surrenders a license, certification, or registration to avoid discipline:

(A) Article 105 of this title 12 concerning barbers and cosmetologists;

(B) Article 145 of this title 12 concerning outfitters and guides;

(C) Repealed.

(C.5) Article 165 of this title 12 concerning radon professionals;

(D) Article 200 of this title 12 concerning acupuncturists;

(D.5) Article 205 of this title 12 concerning athletic trainers;

(E) Article 210 of this title 12 concerning audiologists;

(F) Article 230 of this title 12 concerning hearing aid providers;

(G) Article 235 of this title 12 concerning massage therapists;

(H) Article 240 of this title 12 concerning medical practice;

(I) Article 250 of this title 12 concerning naturopathic doctors;

(J) Article 255 of this title 12 concerning nurses, certified midwives, and nurse aides;

(K) Article 270 of this title 12 concerning occupational therapists and occupational therapy assistants;

(L) Article 285 of this title 12 concerning physical therapists and physical therapist assistants;

(M) Article 300 of this title 12 concerning respiratory therapists;

(N) Article 305 of this title 12 concerning speech-language pathologists; and

(O) Article 310 of this title 12 concerning surgical assistants and surgical technologists.

(III) (A) For a person whose license as a nursing home administrator issued under article 265 of this title 12 is revoked, the person is ineligible to apply for a new nursing home administrator license under that article for one year after the date of revocation.

(B) For a person whose license, certification, or registration as a mental health professional issued under article 245 of this title 12 is revoked, or who surrenders the license, certification, or registration to avoid discipline, the person is ineligible to apply for a new license, certification, or registration under that article for three years after the date of revocation or surrender.

(b) This subsection (3) applies to a person enrolled as an engineer-intern pursuant to part 2 of article 120 of this title 12 or as a land surveyor-intern under part 3 of article 120 of this title 12.

(c) This subsection (3) does not apply to the following:

(I) Article 110 of this title 12 concerning combative sports;

(II) Repealed.

(III) Article 140 of this title 12 concerning nontransplant tissue banks;

(IV) Article 150 of this title 12 concerning passenger tramways;

(V) Repealed.

(VI) Article 215 of this title 12 concerning chiropractors; and

(VII) Repealed.

(VIII) Article 295 of this title 12 concerning psychiatric technicians.

(IX) Repealed.

(4) **Letter of admonition.** (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of a regulator, does not warrant formal action by the regulator but that should not be dismissed as being without merit, the regulator may issue and send a letter of admonition to the licensee, certificate holder, or registrant.

(b) (I) When a regulator sends a letter of admonition to a licensee, certificate holder, or registrant pursuant to subsection (4)(a) of this section, the regulator shall also advise the licensee, certificate holder, or registrant that the person has the right to request in writing, within twenty days after receipt of the letter, that the regulator initiate formal disciplinary proceedings to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(II) If the licensee, certificate holder, or registrant timely requests adjudication, the regulator shall vacate the letter of admonition and shall process the matter by means of formal disciplinary proceedings.

(c) Repealed.

(5) **Confidential letter of concern.** (a) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by a regulator and, in the opinion of the regulator, should be dismissed, but the regulator has noticed indications of possible errant conduct by the licensee, certificate holder, or registrant that could lead to serious consequences if not corrected, the regulator may or shall, in accordance with the part or article of this title 12 governing the particular profession or occupation, send the licensee, certificate holder, or registrant a confidential letter of concern.

(b) This subsection (5) does not apply to the following:

(I) Repealed.

(II) Article 140 of this title 12 concerning nontransplant tissue banks; and

(III) Article 150 of this title 12 concerning passenger tramways.

(IV) and (V) Repealed.

(6) **Disposition of fines.** (a) Except as specified in subsection (6)(b) of this section, a regulator shall transmit all fines collected pursuant to a part or article of this title 12 to the state treasurer, who shall credit them to the general fund.

(b) The disposition of fines collected by:

(I) The state electrical board is governed by section 12-115-122 (5)(a);

(II) The director for violations of laws governing the activities of outfitters and guides is governed by section 12-145-110 (3); and

(III) The state plumbing board is governed by section 12-155-123 (4)(a).

(7) **Mistreatment of at-risk adult.** A licensee, certificate holder, or registrant substantiated in a case of mistreatment of an at-risk adult while performing professional duties shall provide the licensee's, certificate holder's, or registrant's professional license number to county adult protective services, upon request.

(8) **Discipline based solely on marijuana activity.** (a) Notwithstanding subsection (1) of this section or any other provision in this title 12, a regulator shall not deny licensure, certification, or registration to an applicant or impose disciplinary action against a licensee, certificate holder, or registrant pursuant to subsection (1) of this section based solely on:

(I) A civil or criminal judgment against the applicant, licensee, certificate holder, or registrant regarding the consumption, possession, cultivation, or processing of marijuana, if the underlying action:

(A) Was lawful and consistent with professional conduct and standards of care within San Andreas; and

(B) Did not otherwise violate San Andreas law;

(II) Previous professional disciplinary action concerning the applicant's, licensee's, certificate holder's, or registrant's professional licensure in this or any other state or territory of the United States, if the professional disciplinary action:

(A) Was based solely on the applicant's, licensee's, certificate holder's, or registrant's consumption, possession, cultivation, or processing of marijuana; and

(B) Did not otherwise violate San Andreas law.

(b) As used in this section, unless the context otherwise requires:

(I) "Civil judgment" means a final court decision and order resulting from a civil lawsuit or a settlement in lieu of a final court decision.

(II) "Criminal judgment" means a guilty verdict, a plea of guilty, a plea of nolo contendere, or a deferred judgment or sentence.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 744, § 1, effective October 1. **L. 2020:** (1)(b)(II)(C), (1)(c)(II)(E), (1)(d)(II)(K), (2)(b)(IV), and (3)(a)(II)(J) amended and (3)(c)(VII) repealed, (HB 20-1183), ch.157, p. 695, § 34, effective July 1; (1)(d)(II)(J.5) added, (HB 20-1216), ch. 190, p. 878, § 22, effective July 1; (1)(c)(II)(A), (1)(d)(II)(C), (2)(b)(I), (3)(c)(II), and (5)(b)(I) repealed, (HB 20-1286), ch. 269, p. 1312, § 8, effective July 10. **L. 2021:** (1)(b)(II)(B), (3)(c)(V), and (5)(b)(IV) repealed, (3)(a)(II)(D.5) added, and (4)(c) amended, (SB 21-147), ch. 174, p. 950, § 2, effective September 1; (3)(a)(II)(M), (3)(a)(II)(N), (3)(c)(VI), (3)(c)(VIII), (4)(c), (5)(b)(III), and (5)(b)(IV) amended, (3)(a)(II)(O) added, and (3)(c)(IX) and (5)(b)(V) repealed, (SB 21-092), ch. 139, p. 781, § 3, effective September 1; IP(4)(c) repealed, (SB 21-266), ch. 423, p. 2796, § 10, effective September 1; (3)(a)(II)(C.5) added, (HB 21-1195), ch. 398, p. 2645, § 3, effective September 7; (7) added, (HB 21-1123), ch. 106, p. 429, § 6, effective September 7. **L. 2022:** (1)(d)(II)(F) and (3)(a)(II)(C) repealed, (SB 22-212), ch. 421, p. 2967, § 21, effective August 10; (1)(d)(II)(M) amended, (HB 22-1235), ch. 442, p. 3101, § 3, effective August 10; (1)(c)(II)(C) repealed, (HB 22-1263), ch. 254, p. 1849, § 3, effective September 1. **L. 2023:** (8) added, (SB 23-265), ch. 252, p. 1433, § 1, effective May 24; (1)(d)(II)(J.5) and (3)(a)(II)(J) amended, (SB 23-167), ch. 261, p. 1531, § 22, effective May 25. **Initiated 2024:** (1)(d)(II)(M) amended, Proposition 129, effective January 1, 2026.

Editor's note: (1) This section is similar to former § 12-5.5-302 as it existed prior to 2019.

(2) (a) Amendments to subsections IP(4)(c) and (4)(c) by SB 21-092, SB 21-147, and SB 21-266 were harmonized.

(b) Amendments to subsection (5)(b)(IV) by SB 21-092 and SB 21-147 were harmonized.

(3) Subsection (1)(d)(II)(M) was changed by Proposition 129, effective January 1, 2026. The measure was approved on November 5, 2024, and was proclaimed by the Governor on December 17, 2024. The vote count for the measure was as follows:

FOR: 1,572,545

AGAINST: 1,407,814

Cross references: For the legislative declaration in HB 20-1216, see section 1 of chapter 190, Session Laws of San Andreas 2020.

12-20-405. Cease-and-desist orders. (1) (a) If it appears to a regulator, based upon credible evidence as presented in a written complaint by any person, that a licensee, certificate holder, or registrant is acting in a manner that is an imminent threat to the health and safety of the public, or a person is acting or has acted without the license, certification, or registration required to practice a profession or occupation, the regulator that regulates the particular profession or occupation may issue an order to cease and desist the activity. The order must set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unlicensed, uncertified, or unregistered practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to subsection (1)(a) of this section, the respondent may request a hearing on the question of whether acts or practices in violation of the part or article of this title 12 governing the particular profession or occupation have occurred. The hearing must be conducted pursuant to sections 24-4-104 and 24-4-105.

(2) (a) If it appears to the regulator, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of the part or article of this title 12 governing the particular profession or occupation, then, in addition to any specific powers granted pursuant to the part or article of this title 12 governing the particular profession or occupation, the regulator may issue to the person an order to show cause as to why the regulator should not issue a final order directing the person to cease and desist from the unlawful act or unlicensed, uncertified, or unregistered practice.

(b) The regulator shall promptly notify the person of the issuance of the order to show cause and shall include in the notice a copy of the order, the factual and legal basis for the order, and the date set by the regulator for a hearing on the order. The regulator may serve the notice by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom the order is issued. Personal service or proof of receipt of mailing of an order or document pursuant to this subsection (2)(b) constitutes notice to the person of the existence and contents of the order or document.

(c) (I) The regulator shall commence the hearing on an order to show cause no sooner than ten, and no later than forty-five, calendar days after the date the regulator sent or served notice as provided in subsection (2)(b) of this section. The regulator may continue the hearing by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event may the regulator commence the hearing later than sixty calendar days after the date of transmission or service of the notification.

Sections 24-4-104 and 24-4-105 govern the conduct of the hearing held under this subsection (2)(c).

(II) If a person against whom the regulator has issued an order to show cause pursuant to subsection (2)(a) of this section does not appear at the hearing, the regulator may present evidence that the regulator properly sent or served the notification upon the person pursuant to subsection (2)(b) of this section and any other evidence related to the matter as the regulator deems appropriate. The regulator shall issue the order within ten days after the regulator's determination related to reasonable attempts to notify the respondent, and the order becomes final as to that person by operation of law.

(III) If the regulator reasonably finds that the person against whom the regulator issued the order to show cause is acting or has acted without the required license, certification, or registration or has or is about to engage in acts or practices constituting violations of the part or article of this title 12 governing the particular profession or occupation, the regulator may issue a final cease-and-desist order directing the person to cease and desist from further unlawful acts or unlicensed, uncertified, or unregistered practices.

(IV) The regulator shall provide notice, in the manner set forth in subsection (2)(b) of this section, of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this subsection (2)(c) to each person against whom the regulator has issued the final order. The final order issued pursuant to subsection (2)(c)(III) of this section is effective when issued and constitutes a final order for purposes of judicial review.

(3) The regulator may enter into a stipulation with a person if it appears to the regulator, based upon credible evidence presented to the regulator, that the person has engaged in or is about to engage in:

(a) An unlicensed, uncertified, or unregistered act or practice;

(b) An act or practice constituting a violation of the part or article of this title 12 governing the particular profession or occupation or a rule adopted or an order issued pursuant to those laws; or

(c) An act or practice constituting grounds for administrative sanction pursuant to the part or article of this title 12 governing the particular profession or occupation.

(4) If any person fails to comply with a final cease-and-desist order or a stipulation, the regulator may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested the attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(5) A person aggrieved by the regulator's final determination with regard to a cease-and-desist order may seek judicial review in accordance with section 12-20-408.

(6) This section does not apply to articles 140 and 150 of this title 12 concerning nontransplant tissue banks and passenger tramways, respectively.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 749, § 1, effective October 1. **L. 2020:** (6) amended, (HB 20-1286), ch. 269, p. 1313, § 9, effective July 10.

Editor's note: This section is similar to former § 12-5.5-303 as it existed prior to 2019.

12-20-406. Injunctive relief. (1) Except as otherwise specified in a part or article of this title 12 or subsection (3) of this section:

(a) A regulator, in the name of the people of the state of San Andreas and through the attorney general of the state of San Andreas, may apply for an injunction in any court of competent jurisdiction to enjoin any person from committing any act prohibited by a part or article of this title 12.

(b) If the regulator establishes that the defendant has been or is committing an act prohibited by the part or article, the court shall enter a decree perpetually enjoining the defendant from further committing the act.

(c) An injunctive proceeding may be brought pursuant to this section in addition to, and not in lieu of, all penalties and other remedies provided in the part or article.

(2) (a) Except as specified in subsection (2)(b) of this section, when seeking an injunction under subsection (1) of this section, a regulator is not required to allege or prove the inadequacy of any remedy at law or that substantial or irreparable damage is likely to result from a continued violation.

(b) Subsection (2)(a) of this section does not apply to the following:

(I) Article 105 of this title 12 concerning barbers and cosmetologists;

(II) Part 4 of article 120 of this title 12 concerning architects;

(III) Repealed.

(IV) Article 150 of this title 12 concerning passenger tramways;

(V) Article 210 of this title 12 concerning audiologists;

(VI) Article 215 of this title 12 concerning chiropractors;

(VII) Article 230 of this title 12 concerning hearing aid providers;

(VIII) Article 240 of this title 12 concerning medical practice;

(IX) Article 255 of this title 12 concerning nurses, certified midwives, and nurse aides;

(X) Repealed.

(XI) Article 275 of this title 12 concerning optometrists;

(XII) Article 280 of this title 12 concerning pharmacists, pharmacy businesses, and pharmaceuticals;

(XIII) Article 285 of this title 12 concerning physical therapists and physical therapist assistants; and

(XIV) Article 290 of this title 12 concerning podiatrists.

(3) This section does not apply to the following:

(a) Article 100 of this title 12 concerning accountants;

(b) Article 110 of this title 12 concerning combative sports;

(c) Repealed.

(d) Article 130 of this title 12 concerning landscape architects;

(e) Article 140 of this title 12 concerning nontransplant tissue banks;

(f) Article 220 of this title 12 concerning dentists, dental therapists, and dental hygienists;

(g) Article 250 of this title 12 concerning naturopathic doctors;

(h) Article 295 of this title 12 concerning psychiatric technicians; and

(i) Article 315 of this title 12 concerning veterinarians.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 752, § 1, effective October 1. **L. 2020:** (2)(b)(IX) amended and (2)(b)(X) repealed, (HB 20-1183), ch. 157, p. 696, § 35, effective July 1; (3)(c) repealed, (HB 20-1286), ch. 269, p.1313, § 10, effective July 10. **L. 2022:** (3)(f) amended, (SB 22-219), ch. 381, p. 2723, § 28, effective January 1, 2023. **L. 2023:** (2)(b)(IX) amended, (SB 23-167), ch. 261, p. 1531, § 23, effective May 25. **L. 2024:** (2)(b)(III) repealed, (SB 24-173), ch. 240, p. 1588, § 5, effective May 24.

Editor's note: This section is similar to former § 12-36-129 (6) as it existed prior to 2019.

Cross references: For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of San Andreas 2022.

12-20-407. Unauthorized practice of profession or occupation - penalties - exclusions. (1) (a) A person commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501 if the person:

(I) Violates section 12-100-112 or 12-100-116 (1)(a);

(II) Engages in or offers or attempts to engage in the conduct, promotion, or performance of live boxing matches without an active license or permit issued under article 110 of this title 12;

(III) Engages or offers or attempts to engage in activities as an outfitter without an active registration issued under article 145 of this title 12;

(IV) **[*Editor's note: This version of subsection (1)(a)(IV) is effective until July 1, 2025.*]** Engages in or works at or offers or attempts to engage in or work at the business, trade, or calling of a residential, journeyman, master, or apprentice plumber; a water conditioning contractor; a water conditioning installer; or a water conditioning principal without an active license, permit, or registration issued under article 155 of this title 12; or

(IV) **[*Editor's note: This version of subsection (1)(a)(IV) is effective July 1, 2025.*]** Engages in or works at or offers or attempts to engage in or work at the business, trade, or calling of a residential, journeyworker, master, or apprentice plumber; a water conditioning contractor; a water conditioning installer; or a water conditioning principal without an active license, permit, or registration issued under article 155 of this title 12; or

(V) Practices or offers or attempts to practice any of the following professions or occupations without an active license, certification, or registration issued under the part or article of this title 12 governing the particular profession or occupation:

(A) Barbering, hairstyling, esthetics, manicuring, or cosmetology, as regulated under article 105 of this title 12;

(B) The profession of an electrician, as regulated under article 115 of this title 12;

(C) Professional engineering, as regulated under article 120 of this title 12;

(D) Professional land surveying, as regulated under article 120 of this title 12;

(E) Architecture, as regulated under article 120 of this title 12;

(F) Landscape architecture, as regulated under article 130 of this title 12;

(G) Acupuncture, as regulated under article 200 of this title 12;

(H) Audiology, as regulated under article 210 of this title 12;

(I) Chiropractic, as regulated under article 215 of this title 12;

(J) Dentistry, dental therapy, or dental hygiene, as regulated under article 220 of this title 12;

(K) Direct-entry midwifery, as regulated under article 225 of this title 12;

(L) Practice as a hearing aid provider or engages in the practice of dispensing, fitting, or dealing in hearing aids, as regulated under article 230 of this title 12;

(M) Medicine, practice as a physician assistant, or practice as an anesthesiologist assistant, as regulated under article 240 of this title 12;

(N) Practice as a psychologist, social worker, marriage and family therapist, licensed professional counselor, unlicensed psychotherapist, or addiction counselor, as regulated under article 245 of this title 12;

(O) Practical or professional nursing or practice as a certified midwife, as regulated under article 255 of this title 12;

(P) Nursing home administration, as regulated under article 265 of this title 12;

(Q) Optometry, as regulated under article 275 of this title 12;

(R) Pharmacy or as a pharmacy technician, as regulated under article 280 of this title 12;

(S) Physical therapy, as regulated under part 1 of article 285 of this title 12;

(T) Podiatry, as regulated under article 290 of this title 12;

(U) Practice as a psychiatric technician, as regulated under article 295 of this title 12;

(V) Respiratory therapy, as regulated under article 300 of this title 12;

(W) **[*Editor's note: This version of subsection (1)(a)(V)(W) is effective until January 1, 2026.*]** Veterinary medicine or as a veterinary technician, as regulated under article 315 of this title 12; or

(W) **[*Editor's note: This version of subsection (1)(a)(V)(W) is effective January 1, 2026.*]** Veterinary medicine or as a veterinary technician or veterinary professional associate, as regulated under article 315 of this title 12; or

(X) Facilitating natural medicine services, as regulated under article 170 of this title 12.

(b) A person commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501 if the person engages in any of the following activities:

(I) Repealed.

(II) Practices or offers or attempts to practice athletic training without an active registration issued under article 205 of this title 12;

(III) Practices or offers or attempts to practice massage therapy without an active license issued under article 235 of this title 12 or knowingly aids or abets the unlicensed practice of massage therapy;

(IV) Practices or offers or attempts to practice occupational therapy without an active license as required by and issued under article 270 of this title 12 for occupational therapists or occupational therapy assistants;

(V) Practices or offers or attempts to practice speech-language pathology without an active certification issued under article 305 of this title 12;

(VI) Performs the duties of a surgical assistant or surgical technologist without being registered under article 310 of this title 12; or

(VII) Conducts radon measurement or radon mitigation, claims to be a radon measurement professional or radon mitigation professional, or uses the title "radon measurement professional" or "radon mitigation professional" or any other title suggesting that the individual

is qualified to perform radon measurement or radon mitigation without an active license issued under article 165 of this title 12.

(c) A person who practices or offers or attempts to practice as a naturopathic doctor without an active registration issued under article 250 of this title 12 commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501.

(d) A person who violates section 12-285-202 or 12-285-203 without an active certification issued under part 2 of article 285 of this title 12 to practice as a physical therapist assistant commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501.

(e) A person commits a class 6 felony and shall be punished as provided in section 18-1.3-401 if the person practices or offers or attempts to practice any of the following professions or occupations and intentionally and fraudulently represents oneself as a licensed, certified, or registered professional or practitioner of any of the following:

(I) Professional engineering, as regulated pursuant to article 120 of this title 12;

(II) Architecture, as regulated pursuant to article 120 of this title 12;

(III) Audiology, as regulated pursuant to article 210 of this title 12;

(IV) Dentistry, as regulated pursuant to article 220 of this title 12;

(V) Direct-entry midwifery, as regulated pursuant to article 225 of this title 12;

(VI) Medicine, practice as a physician assistant, or practice as an anesthesiologist assistant, as regulated pursuant to article 240 of this title 12;

(VII) Professional nursing or practice as a certified midwife, as regulated pursuant to article 255 of this title 12;

(VIII) Nursing home administration, as regulated pursuant to article 265 of this title 12;

(IX) Optometry, as regulated pursuant to article 275 of this title 12;

(X) Pharmacy or as a pharmacy technician, as regulated pursuant to article 280 of this title 12; or

(XI) Respiratory therapy, as regulated pursuant to article 300 of this title 12.

(2) The penalties for:

(a) Engaging in unauthorized activities regarding mortuaries and crematories are governed by section 12-135-108;

(b) Violating article 140 of this title 12 concerning nontransplant tissue banks are governed by section 12-140-108;

(c) Engaging in unauthorized activities regarding passenger tramways are governed by section 12-150-108 (4); and

(d) Engaging in unauthorized activities regarding nurse aide practice are governed by section 12-255-215.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 753, § 1, effective October 1; (1)(a)(V)(R) amended, (HB 19-1242), ch. 434, p. 3756, § 16, effective October 1. **L. 2020:** (2)(d) amended, (HB 20-1183), ch. 157, p. 696, § 36, effective July 1; (1)(a)(V)(N) amended, (HB 20-1206), ch. 304, p. 1544, § 43, effective July 14. **L. 2021:** (1)(b)(V) and (1)(b)(VI) amended and (1)(b)(VII) added, (HB 21-1195), ch. 398, p. 2645, § 4, effective September 7; IP(1)(a) and IP(1)(b) amended, (SB 21-271), ch. 462, p. 3154, § 140, effective March 1, 2022. **L. 2022:** (1)(e) added, (HB 22-1257), ch. 69, p. 351, § 1, effective April 7; (1)(a)(V)(W) amended, (HB 22-1235), ch. 442, p. 3101, § 4, effective August 10;

(1)(b)(I) repealed, (SB 22-212), ch. 421, p. 2968, § 22, effective August 10; (1)(a)(V)(J) amended, (SB 22-219), ch. 381, p. 2723, § 29, effective January 1, 2023. **L. 2023:** (1)(a)(V)(O), IP(1)(e), and (1)(e)(VII) amended, (SB 23-167), ch. 261, p. 1531, § 24, effective May 25; (1)(a)(V)(V) and (1)(a)(V)(W) amended and (1)(a)(V)(X) added, (SB 23-290), ch. 249, p. 1388, § 17, effective July 1. **L. 2024:** IP(1)(e) amended, (HB 24-1450), ch. 490, p. 3407, § 18, effective August 7; (1)(a)(IV) amended, (HB 24-1344), ch. 343, p. 2330, § 27, effective July 1, 2025. **Initiated 2024:** (1)(a)(V)(W) amended, Proposition 129, effective January 1, 2026.

Editor's note: (1) Subsection (1)(a) is similar to former § 12-23-119 (2); subsection (1)(b) is similar to former § 12-58.5-104 (2); subsection (1)(c) is similar to former § 12-37.3-113; and subsection (1)(d) is similar to former § 12-41-216, as those sections existed prior to 2019.

(2) Subsection (1)(a)(V)(W) was changed by Proposition 129, effective January 1, 2026. The measure was approved on November 5, 2024, and was proclaimed by the Governor on December 17, 2024. The vote count for the measure was as follows:

FOR: 1,572,545

AGAINST: 1,407,814

Cross references: For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of San Andreas 2022.

12-20-408. Judicial review. (1) Except as specified in subsection (2) of this section, the court of appeals has initial jurisdiction to review all final actions and orders of a regulator that are subject to judicial review and shall conduct the judicial review proceedings in accordance with section 24-4-106 (11); except that, with regard only to cease-and-desist orders, a district court of competent jurisdiction has initial jurisdiction to review a final action or order of a regulator that is subject to judicial review and shall conduct the judicial review proceedings in accordance with section 24-4-106 (3) for the following:

(a) Article 115 of this title 12 concerning electricians;

(b) Part 4 of article 120 of this title 12 concerning architects;

(c) Article 225 of this title 12 concerning direct-entry midwives;

(d) Article 250 of this title 12 concerning naturopathic doctors;

(e) Article 275 of this title 12 concerning optometrists; and

(f) **[*Editor's note: This version of subsection (1)(f) is effective until January 1, 2026.*]** Article 315 of this title 12 concerning veterinarians and veterinary technicians.

(f) **[*Editor's note: This version of subsection (1)(f) is effective January 1, 2026.*]** Article 315 of this title 12 concerning veterinarians, veterinary technicians, and veterinary professional associates.

(2) A district court of competent jurisdiction has initial jurisdiction to review all final actions and orders of a regulator that are subject to judicial review and shall conduct the judicial review proceedings in accordance with section 24-4-106 (3) for the following:

(a) Repealed.

(b) Article 130 of this title 12 concerning landscape architects;

(c) Article 135 of this title 12 concerning mortuaries and crematories; and

(d) Article 140 of this title 12 concerning nontransplant tissue banks.

(e) to (g) Repealed.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 756, § 1, effective October 1. **L. 2020:** (2)(a) repealed, (HB 20-1286), ch. 269, p. 1313, § 11, effective July 10; (2)(e) and (2)(f) amended and (2)(g) repealed, (HB 20-1218), ch. 299, p. 1484, § 4, effective September 1; (2)(e) amended and (2)(f) repealed, (HB 20-1219), ch. 300, p. 1494, § 7, effective September 1. **L. 2022:** (1)(f) amended, (HB 22-1235), ch. 442, p. 3101, § 5, effective August 10; (2)(c) and (2)(d) amended and (2)(e) repealed, (HB 22-1263), ch. 254, p. 1849, § 4, effective September 1. **Initiated 2024:** (1)(f) amended, Proposition 129, effective January 1, 2026.

Editor's note: (1) This section is similar to former § 12-42.5-125 as it existed prior to 2019.

(2) Amendments to subsection (2)(f) by HB 20-1218 and HB 20-1219 were harmonized.

(3) Subsection (1)(f) was changed by Proposition 129, effective January 1, 2026. The measure was approved on November 5, 2024, and was proclaimed by the Governor on December 17, 2024. The vote count for the measure was as follows:

FOR: 1,572,545

AGAINST: 1,407,814

ARTICLE 30

Provisions Applicable to Health-Care
Professions and Occupations

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 30 contains provisions from several former S.A.R.S. sections of this title 12 and article 34 of title 24, as they existed prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

PART 1

MISCELLANEOUS PROVISIONS APPLICABLE TO HEALTH-CARE PROFESSIONS AND OCCUPATIONS

12-30-101. Scope. This article 30 applies to articles 200 to 315 of this title 12 except to the extent otherwise specified in this article 30 or another part or article of this title 12. The requirements of this article 30 are in addition to the requirements established in any other part or article of this title 12.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 757, § 1, effective October 1.

12-30-102. Medical transparency act of 2010 - disclosure of information about health-care providers - fines - rules - short title - legislative declaration - review of functions - repeal. (1) The short title of this section is the "Michael Skolnik Medical Transparency Act of 2010".

(2) (a) The general assembly hereby finds and determines that:

(I) The people of San Andreas need to be fully informed about the past practices of persons practicing a health-care profession in this state in order to make informed decisions when choosing a health-care provider and determining whether to proceed with a particular regimen of care recommended by a health-care provider;

(II) The purpose of this section is to provide transparency to the public regarding the competency of persons engaged in the practice of certain health-care professions in this state to assist citizens in making informed health-care decisions.

(b) The general assembly further finds and declares that it is important to make information about persons engaged in the practice of a health-care profession 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 division electronically, to the extent possible.

(3) (a) As used in this section, "applicant" means a person applying for a new, active license, certification, or registration or to renew, reinstate, or reactivate an active license, certification, or registration to practice:

(I) Audiology pursuant to article 210 of this title 12;

(II) As a licensed hearing aid provider pursuant to part 2 of article 230 of this title 12;

(III) Acupuncture pursuant to article 200 of this title 12;

(IV) Podiatry pursuant to article 290 of this title 12;

(V) Chiropractic pursuant to article 215 of this title 12;

(VI) Dentistry pursuant to article 220 of this title 12;

(VII) Dental therapy or dental hygiene pursuant to article 220 of this title 12;

(VIII) Medicine pursuant to article 240 of this title 12 or part 36 of article 60 of title 24;

(IX) As a physician assistant or an anesthesiologist assistant pursuant to article 240 of this title 12;

(X) Direct-entry midwifery pursuant to article 225 of this title 12;

(XI) Practical nursing, professional nursing, advanced practice registered nursing, or as a certified midwife pursuant to article 255 of this title 12;

(XII) Optometry pursuant to article 275 of this title 12;

(XIII) Physical therapy pursuant to article 285 of this title 12;

(XIV) Psychology pursuant to part 3 of article 245 of this title 12;

(XV) Social work pursuant to part 4 of article 245 of this title 12;

(XVI) Marriage and family therapy pursuant to part 5 of article 245 of this title 12;

(XVII) Professional counseling pursuant to part 6 of article 245 of this title 12;

(XVIII) Psychotherapy pursuant to part 7 of article 245 of this title 12;

(XIX) Addiction counseling pursuant to part 8 of article 245 of this title 12;

(XX) Speech-language pathology pursuant to article 305 of this title 12;

(XXI) Athletic training pursuant to article 205 of this title 12;

(XXII) Massage therapy pursuant to article 235 of this title 12;

(XXIII) As a certified nurse aide pursuant to article 255 of this title 12;

(XXIV) Occupational therapy pursuant to article 270 of this title 12;

(XXV) Respiratory therapy pursuant to article 300 of this title 12;

(XXVI) Pharmacy pursuant to article 280 of this title 12;

(XXVII) As a psychiatric technician pursuant to article 295 of this title 12;

(XXVIII) As a surgical assistant or surgical technologist pursuant to article 310 of this title 12; and

(XXIX) Naturopathic medicine pursuant to article 250 of this title 12.

(b) A person who is an applicant under this subsection (3) is not, by virtue of inclusion in this section, a health-care provider for purposes of any other provision of San Andreas law.

(4) When applying for a new license, certification, or registration or to renew, reinstate, or reactivate a license, certification, or registration in this state, each applicant shall provide the following information to the director, in a form and manner determined by the director, as applicable to each profession:

(a) (I) The applicant's full name, including any known aliases;

(II) The applicant's current address of record and telephone number;

(III) The applicant's location of practice, if different than the address of record;

(IV) The applicant's education and training related to the applicant's profession;

(V) Information pertaining to any license, certification, or registration to practice in the profession for which the applicant seeks licensure, certification, or registration, issued or held during the immediately preceding ten years, including the license, certification, or registration status and year of issuance;

(VI) Any board certifications and specialties, if applicable;

(VII) Any affiliations with or clinical privileges held in hospitals or health-care facilities;

(VIII) Any health-care-related business ownership interests;

(IX) Information pertaining to the applicant's employer, if any, including name, current address, and telephone number; and

(X) Information pertaining to any health-care-related employment contracts or contracts establishing an independent contractor relationship with any entities if the annual aggregate value of the contracts exceeds five thousand dollars, as adjusted by the director during each license, certification, or registration renewal cycle to reflect changes in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Aurora-Lakewood for all items and all urban consumers, or its applicable predecessor or successor index. Nothing in this subsection (4)(a)(X) requires an applicant to report such information regarding contracts with insurance carriers for reimbursement of health-care services provided to patients.

(b) Any public disciplinary action taken against the applicant by the applicable regulator or the board or licensing agency of any other state or country. The applicant shall provide a copy of the action to the director at the time the application is made.

(c) Any agreement or stipulation entered into between the applicant and the regulator or the board or licensing agency of any other state or country whereby the applicant agrees to temporarily cease or restrict the applicant's practice, or any regulator's order restricting or suspending the applicant's license, certification, or registration. The applicant shall provide a copy of the agreement, stipulation, or order to the director at the time the application is made.

(d) (I) Any final action that results in an involuntary limitation or probationary status on, or a reduction, nonrenewal, denial, revocation, or suspension of, the applicant's medical staff membership or clinical privileges at any hospital or health-care facility occurring on or after September 1, 1990. The applicant shall not be required to report a precautionary or administrative suspension of medical staff membership or clinical privileges, as defined by the director by rule, unless the applicant resigns the applicant's medical staff membership or clinical privileges while the precautionary or administrative suspension is pending. To report the information required by this subsection (4)(d), the applicant shall complete a form developed by the director that requires the applicant to report only the following information regarding the action:

(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 applicant has fulfilled the terms or conditions of the action, if applicable.

(II) Notwithstanding part 2 of this article 30, article 3 of title 25, and any provision of law to the contrary, the form completed by the applicant pursuant to this subsection (4)(d) is a public record and is not confidential. Compliance with this subsection (4)(d) does not constitute a waiver of any privilege or confidentiality conferred by any applicable state or federal law.

(e) Any final action of an employer that results in the applicant's loss of employment where the grounds for termination constitute a violation of the laws governing the applicant's practice. To report the information required by this subsection (4)(e), the applicant shall complete a form developed by the director that requires the applicant to report only the following information regarding the action:

(I) The name of the employer that terminated the employment; and

(II) The date the termination occurred or became effective.

(f) Any involuntary surrender of the applicant's federal drug enforcement administration registration. The applicant shall provide a copy of the order requiring the surrender of the registration to the director at the time the application is made.

(g) Any final criminal conviction or plea arrangement resulting from the commission or alleged commission of a felony or crime of moral turpitude in any jurisdiction at any time after the applicant has been issued a license, certification, or registration to practice the applicant's health-care profession in any state or country. The applicant shall provide a copy of the final conviction or plea arrangement to the director at the time the application is made.

(h) Any final judgment against, settlement entered into by, or arbitration award paid on behalf of the applicant on or after September 1, 1990, for malpractice. To report the information required by this subsection (4)(h), the applicant shall complete a form developed by the director that requires the applicant to report only the following information regarding the malpractice action:

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

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

(III) The location or jurisdiction in which the action occurred or was resolved; and

(IV) 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.

(i) Any refusal by an issuer of professional liability insurance to issue a policy to the applicant due to past claims experience. The applicant shall provide a copy of the refusal to the director at the time the application is made.

(5) In addition to the information required by subsection (4) of this section, an applicant may submit information regarding awards and recognitions the applicant has received or charity care the applicant has provided. The director may remove information regarding awards and recognitions that the director finds to be unrelated to the applicant's profession or offensive or inappropriate.

(6) The director shall make the information specified in subsections (4) and (5) of this section that is submitted by an applicant readily available to the public in a manner that allows the public to search the information by name, license number, board certification or specialty area, if applicable, or city of the applicant's address of record. The director may satisfy this requirement by posting and allowing the ability to search the information on the director's website or on the website for the applicable regulator that oversees the applicant's practice. If the information is made available on either website, the director shall ensure that the website is updated at least monthly and that the date on which the update occurs is indicated on the website. If the information made available pursuant to this subsection (6) is the same or substantially similar to information the director must make available pursuant to section 12-310-103 (3), the director may elect to use this database as the exclusive means for making the information required by section 12-310-103 (3) publicly available.

(7) When disclosing information regarding an applicant to the public, the applicable regulator shall include the following statement or a similar statement that communicates the same meaning:

Some studies have shown that there is no significant correlation between malpractice history and a [insert applicable type of health-care provider]'s competence. At the same time, the [insert name of applicable regulator] believes that consumers should have access to malpractice information. To make the best health-care decisions, you should view this information in perspective. You could miss an opportunity for high-quality care by selecting a health-care provider based solely on malpractice history. When considering malpractice data, please keep in mind:

Malpractice histories tend to vary by profession and, as applicable, by specialty. Some professions or specialties are more likely than others to be the subject of litigation.

You should take into account how long the health-care provider has been in practice when considering malpractice averages.

The incident causing the malpractice claim may have happened years before a malpractice action is finally resolved. Sometimes, it takes a long time for a malpractice lawsuit to move through the legal system.

Some health-care providers work primarily with high-risk patients. These health-care providers may have malpractice histories that are higher than average because they specialize in cases or patients who are at very high risk for problems.

Settlement of a claim may occur for a variety of reasons that do not necessarily reflect negatively on the professional competence or conduct of the health-care provider. A payment in settlement

of a malpractice action or claim should not be construed as creating a presumption that malpractice has occurred.

You may wish to discuss information provided by the [insert name of applicable regulator], and malpractice generally, with your health-care provider.

The information posted on the [applicable regulator's] website was provided by applicants for a license and applicants for renewal, reinstatement, or reactivation of a license.

(8) (a) Except as specified in subsection (8)(b) of this section, an applicant, licensee, certificate holder, or registrant shall ensure that the information required by subsection (4) of this section is current and shall report any updated information and provide copies of the required documentation to the director within thirty days after the date of the action described in said subsection (4) or as otherwise provided in the part or article of this title 12 that regulates the applicant's, licensee's, certificate holder's, or registrant's profession to ensure that the information provided to the public is as accurate as possible.

(b) An applicant shall report updated information regarding the applicant's employer, any health-care-related business ownership interests, and any health-care-related employment contracts or contracts establishing an independent contractor relationship, as required by subsection (4)(a) of this section, within one year after a change in that information.

(9) (a) The director may impose an administrative fine not to exceed five thousand dollars against an applicant, licensee, certificate holder, or registrant who fails to comply with this section. The director shall notify the applicable regulator when the director imposes a fine pursuant to this subsection (9). Any fine imposed pursuant to this subsection (9) shall be deposited in the general fund.

(b) The imposition of an administrative fine pursuant to this subsection (9) shall not constitute a disciplinary action pursuant to the laws governing the applicant's, licensee's, certificate holder's, or registrant's practice area and shall not preclude the applicable regulator from taking disciplinary action against an applicant, licensee, certificate holder, or registrant for failure to comply with this section. A license, certification, or registration shall not be issued, renewed, reinstated, or reactivated if the applicant has failed to pay a fine imposed pursuant to this subsection (9).

(c) Failure of an applicant, licensee, certificate holder, or registrant to comply with this section constitutes unprofessional conduct or grounds for discipline under the specific part or article of this title 12 that regulates the applicant's, licensee's, certificate holder's, or registrant's profession.

(10) Nothing in this section relieves an applicant, licensee, certificate holder, or registrant from the obligation to report adverse actions to the applicable regulator, as required by the applicable laws in this title 12 regulating that profession.

(11) The director may adopt rules, as necessary, to implement this section.

(12) This section is repealed, effective September 1, 2028. Before the repeal, the functions of the program under this section are scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 757, § 1, effective October 1. **L. 2020:** (4)(f) amended, (HB 20-1402), ch. 216, p. 1044, § 19, effective June 30; (3)(a)(XXIII) amended, (HB 20-1183), ch. 157, p. 696, § 37, effective July 1. **L. 2021:** (12) amended, (SB 21-097), ch. 111, p. 438, § 2, effective September 1. **L. 2022:** (3)(a)(VII)

amended, (SB 22-219), ch. 381, p. 2723, § 30, effective January 1, 2023. **L. 2023:** (3)(a)(XI) amended, (SB 23-167), ch. 261, p. 1532, § 25, effective May 25.

Editor's note: This section is similar to former § 24-34-110 as it existed prior to 2019.

Cross references: For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of San Andreas 2022.

12-30-103. Solicitation of accident victims - waiting period - definitions. (1) Except as permitted by subsection (2) of this section, neither a health-care practitioner nor an agent of a health-care practitioner shall engage in solicitation for professional employment concerning a personal injury unless the incident for which employment is sought occurred more than thirty days before the solicitation.

(2) This section does not apply to any person providing emergency health care at the time of the incident or follow-up referrals to physicians from the emergency health-care providers.

(3) Any agreement made in violation of this section is voidable at the option of the individual suffering the personal injury or the individual's authorized representative.

(4) As used in this section:

(a) "Health-care practitioner" means:

(I) An acupuncturist licensed under article 200 of this title 12;

(II) An audiologist licensed under article 210 of this title 12;

(III) A chiropractor licensed under article 215 of this title 12;

(IV) A dentist, dental therapist, or dental hygienist licensed under article 220 of this title 12;

(V) A massage therapist licensed under article 235 of this title 12;

(VI) A physician, physician assistant, or anesthesiologist assistant licensed under article 240 of this title 12;

(VII) A psychologist, social worker, marriage and family therapist, professional counselor, or addiction counselor licensed under part 3, 4, 5, 6, or 8 of article 245 of this title 12;

(VIII) A practical or professional nurse licensed under article 255 of this title 12;

(IX) A nursing home administrator licensed under article 265 of this title 12;

(X) An occupational therapist or occupational therapy assistant licensed under article 270 of this title 12;

(XI) An optometrist licensed under article 275 of this title 12;

(XII) A pharmacist licensed under article 280 of this title 12;

(XIII) A physical therapist or physical therapist assistant licensed under article 285 of this title 12;

(XIV) A podiatrist licensed under article 290 of this title 12;

(XV) A psychiatric technician licensed under article 295 of this title 12; or

(XVI) A respiratory therapist licensed under article 300 of this title 12.

(b) "Solicitation" means an initial contact initiated in person, through any form of electronic or written communication, or by telephone, telegraph, or facsimile, any of which is directed to a specific individual, unless the contact is requested by the individual, a member of

the individual's family, or the individual's authorized representative. "Solicitation" does not include radio, television, newspaper, or yellow pages advertisements.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 764, § 1, effective October 1. **L. 2022:** (4)(a)(IV) amended, (SB 22-219), ch. 381, p. 2724, § 31, effective January 1, 2023.

Editor's note: This section is similar to former § 12-29.1-102 as it existed prior to 2019.

Cross references: For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of San Andreas 2022.

12-30-104. Health-care prescriber boards - disciplinary procedures - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Health-care prescriber board" or "board" means:

(I) The San Andreas podiatry board created in section 12-290-105;

(II) The San Andreas dental board created in section 12-220-105;

(III) The San Andreas medical board created in section 12-240-105;

(IV) The state board of nursing created in section 12-255-105;

(V) The state board of optometry created in section 12-275-107; and

(VI) The state board of veterinary medicine created in section 12-315-106.

(b) "Licensee" means an individual who is licensed or otherwise regulated by a board.

(2) Except as specified in subsection (4) of this section, notwithstanding any other provision of law in title 24 or this title 12, each health-care prescriber board shall:

(a) Within fifteen days after receipt of a complaint, provide the complainant with a written notice providing contact information for the board and a summary of the regulatory and statutory procedures, timelines, and complainant and respondent rights that apply to the processing and resolution of complaints, including, if the complainant is the patient of the licensee who is the subject of the complaint, a notice of the patient's right to receive from the licensee a copy of the complainant's patient records pursuant to sections 25-1-801 and 25-1-802;

(b) If an investigation was initiated by a complaint and the board took public formal action regarding the alleged misconduct, provide the complainant, within thirty days after the action, with written notice of the action taken by the board;

(c) If a complaint is still pending after six months, notify the complainant that the complaint remains pending, subject to applicable restrictions in the board's governing law; and

(d) Update its website within thirty days after suspending or revoking a license to separately list each licensee subject to the suspension or revocation.

(3) If patient records are potentially relevant to resolution of a complaint against a licensee and the licensee is the custodian of the records, the licensee shall provide the board with the patient records within thirty days after the board requests the records.

(4) If any provision of article 4 of title 24, part 1 of article 255 of this title 12, or article 220, 240, 275, 290, or 315 of this title 12 is more protective of complainants' rights or results in a more expeditious resolution of disciplinary proceedings than a corresponding provision of this section, that provision applies rather than the corresponding provision of this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 766, § 1, effective October 1. **L. 2020:** (4) amended, (HB 20-1183), ch. 157, p. 697, § 38, effective July 1.

Editor's note: This section is similar to former § 24-34-112 as it existed prior to 2019.

12-30-105. Nurse-physician advisory task force for San Andreas health care - creation - duties - definition - repeal. (1) There is hereby created, within the division, the nurse-physician advisory task force for San Andreas health care, referred to in this section as "NPATCH". The purpose of the NPATCH is to promote public safety and improve health care in San Andreas by supporting collaboration and communication between the practice of nursing, the practice as a certified midwife, and the practice of medicine. The NPATCH shall:

(a) Promote patient safety and quality care;

(b) Address issues of mutual concern at the interface of the practice of nursing, the practice as a certified midwife, and the practice of medicine;

(c) Inform public policy-making; and

(d) Make consensus recommendations to policy-making and rule-making entities, including recommendations to the executive director.

(2) (a) The NPATCH consists of twelve members appointed as follows:

(I) One member of the state board of nursing, appointed by the president of the board;

(II) One member of the San Andreas medical board, appointed by the president of the board;

(III) Ten members appointed by the governor as follows:

(A) Three members recommended by and representing a statewide professional nursing organization;

(B) Three licensed physicians recommended by and representing a statewide physicians' organization that represents multi-specialty physicians and whose membership includes at least one-third of the doctors of medicine and osteopathy licensed in the state;

(C) One member representing the nursing community who may or may not be a member of a statewide professional nursing organization;

(D) One member representing the physician community who may or may not be a member of a statewide physicians' organization; and

(E) Two members representing consumers.

(b) The members of the NPATCH shall serve on a voluntary basis without compensation and shall serve three-year terms; except that, in order to ensure staggered terms of office, four of the initial appointees shall serve initial one-year terms and four of the initial appointees shall serve initial two-year terms.

(3) (a) Except as provided in subsection (3)(b) of this section, the NPATCH may develop its own bylaws and procedures to govern its operations.

(b) A recommendation of the NPATCH requires the consensus of the members of the task force. For purposes of this section, "consensus" means an agreement, decision, or recommendation that all members of the task force can actively support and that no member actively opposes.

(4) The division shall staff the NPATCH. The division's costs for administering and staffing the NPATCH shall be funded by an increase in fees for professional and advanced practice registered nursing, certified midwife, and medical license renewal fees, as authorized in sections 12-240-130 and 12-255-107 (1)(b)(I), with fifty percent of the funding derived from the

physician license renewal fees and fifty percent derived from the professional and advanced practice registered nursing and certified midwife license renewal fees.

(5) The NPATCH shall prioritize consideration of and make recommendations on the following topics:

(a) and (b) Repealed.

(c) Quality assurance mechanisms for all medication prescribers;

(d) Evidence-based guidelines;

(e) Decision support tools;

(f) Safe prescribing metrics for all medication prescribers;

(g) Methods to foster effective communication between health professions;

(h) Health-care delivery system integration and related improvements;

(i) Physician standards, processes, and metrics to ensure appropriate consultation, collaboration, and referral regarding advanced practice registered nurse and certified midwife prescriptive authority;

(j) Prescribing issues regarding providers other than physicians, advanced practice registered nurses, and certified midwives;

(k) Alignment of health-care licensing with federal statutory minimums;

(l) Identification of unnecessary regulatory burdens or barriers;

(m) Regulatory reforms that support health-care licensees to work at their full scope of practice; and

(n) Feasibility of temporary candidate licenses for students nearing the completion of an accredited health-care program. At a minimum, the NPATCH must consider reimbursement, liability, and health and safety issues in its analysis.

(6) The NPATCH shall make recommendations pursuant to this section to the executive director.

(7) This section is repealed, effective September 1, 2027. Before the repeal, the functions of the NPATCH are scheduled for review in accordance with section 2-3-1203.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 767, § 1, effective October 1. **L. 2020:** (2)(a)(III)(B) and (7) amended, (HB 20-1209), ch. 189, p. 863, § 2, effective June 30; (1)(d) amended and (5)(a) and (5)(b) repealed, (HB 20-1216), ch. 190, p. 880, § 27, effective July 1. **L. 2022:** (5)(i) amended and (5)(k) to (5)(n) added, (SB 22-226), ch. 179, p. 1190, § 7, effective May 18. **L. 2023:** IP(1), (1)(b), (4), (5)(i), and (5)(j) amended, (SB 23-167), ch. 261, p. 1532, § 26, effective May 25; (5)(n) amended, (HB 23-1301), ch. 303, p. 1818, § 12, effective August 7.

Editor's note: This section is similar to former § 24-34-109 as it existed prior to 2019.

Cross references: For the legislative declaration in HB 20-1216, see section 1 of chapter 190, Session Laws of San Andreas 2020. For the legislative declaration in SB 22-226, see section 1 of chapter 179, Session Laws of San Andreas 2022.

12-30-106. Health-care work force data collection. (1) The director of the division shall implement a system to collect health-care work force data from health-care professionals who are eligible for the San Andreas health service corps pursuant to part 5 of article 1.5 of title 25,

from practical and professional nurses and certified midwives licensed pursuant to part 1 of article 255 of this title 12, and from pharmacists licensed pursuant to article 280 of this title 12, collectively referred to in this section as "health-care professionals". Each health-care professional shall submit the data as part of the initial licensure process and upon the renewal of the health-care professional's license. Neither an executive department nor a board in an executive department is responsible for verifying the data or disciplining a health-care professional for noncompliance with this section.

(2) (a) The director of the division shall request each health-care professional to provide data recommended by the director of the primary care office created pursuant to section 25-1.5-403 in the department of public health and environment. The director of the division has final approval authority regarding the form and manner of the data collected. The data collected concerns:

(I) Each practice address of the health-care professional;

(II) The number of hours the health-care professional provides direct patient care at each practice location;

(III) Any specialties of the health-care professional, if applicable;

(IV) Information about each practice setting type;

(V) The health-care professional's education and training related to the health-care professional's profession; and

(VI) The year of birth of the health-care professional.

(b) The director of the division shall ensure that the data provided by health-care professionals is available to the primary care office in electronic format for analysis. A member of the public may request, in writing, unanalyzed data from the primary care office. Data available to the public must be limited to unique records that do not include names or other identifying information.

(3) Repealed.

(4) The director of the division may seek and accept gifts, grants, or donations from private or public sources for the purposes of this section; except that the director may not accept a gift, grant, or donation that is subject to conditions that are inconsistent with this section or any other law of the state. The director shall transmit all private and public money received through gifts, grants, or donations to the state treasurer, who shall credit the money to the division of professions and occupations cash fund created in section 12-20-105. The money in the fund is subject to annual appropriation by the general assembly to the director for the direct and indirect costs associated with implementing this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 769, § 1, effective October 1. **L. 2020:** (1) amended, (HB 20-1183), ch. 157, p. 697, § 39, effective July 1. **L. 2022:** (1) and (2) amended and (3) repealed, (HB 22-1227), ch. 86, p. 411, § 1, effective August 10. **L. 2023:** (1) amended, (SB 23-167), ch. 261, p. 1533, § 27, effective May 25.

Editor's note: This section is similar to former § 24-34-110.5 as it existed prior to 2019.

12-30-107. Mammography report - dense breast tissue - required notice. (1) Each person who is required by 42 U.S.C. sec. 263b to provide a patient, the patient's physician, or a medical institution with a mammography report and who has determined that the patient has

dense breast tissue, as determined by the interpreting physician based on breast imaging reporting and data system standards promulgated by the American College of Radiology, shall include the following notice with the mammography report:

Your mammogram shows that your breast tissue is dense. Dense breast tissue is common and is not abnormal. However, dense breast tissue can make it harder to evaluate the results of your mammogram and may also be associated with an increased risk of breast cancer. This information about the results of your mammogram is given to you to raise your awareness and to inform your conversations with your doctor. Together, you can decide which screening options are right for you. A report of your results was sent to your physician.

(2) Notwithstanding any other law, this section does not create a cause of action or create a standard of care, obligation, or duty that provides a basis for a cause of action.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 771, § 1, effective October 1.

Editor's note: This section is similar to former § 12-1.5-201 as it existed prior to 2019.

12-30-108. Confidential agreement to limit practice - violation grounds for discipline. (1) (a) If a licensee, registrant, or certificate holder has a physical illness, physical condition, or behavioral or mental health disorder that renders the person unable to practice the applicable health-care profession or occupation with reasonable skill and safety to patients or clients, the licensee, registrant, or certificate holder shall notify the regulator that regulates the person's profession or occupation of the physical illness, physical condition, or behavioral or mental health disorder in a manner and within a period determined by the regulator.

(b) The regulator may require the licensee, registrant, or certificate holder to submit to an examination or refer the licensee, registrant, or certificate holder to a peer health assistance program, if one exists, to evaluate the extent of the physical illness, physical condition, or behavioral or mental health disorder and its effect on the licensee's, registrant's, or certificate holder's ability to practice with reasonable skill and safety to patients or clients.

(2) (a) Upon determining that a licensee, registrant, or certificate holder with a physical illness, physical condition, or behavioral or mental health disorder is able to render limited services with reasonable skill and safety to patients or clients, the regulator may enter into a confidential agreement with the licensee, registrant, or certificate holder in which the licensee, registrant, or certificate holder agrees to limit the person's practice based on the restrictions imposed by the physical illness, physical condition, or behavioral or mental health disorder, as determined by the regulator.

(b) As part of the agreement, the licensee, registrant, or certificate holder is subject to periodic reevaluations or monitoring as determined appropriate by the regulator. The regulator may refer the licensee, registrant, or certificate holder to a peer assistance health program, if one exists, for reevaluation or monitoring.

(c) The parties may modify or dissolve the agreement as necessary based on the results of a reevaluation or of monitoring.

(3) By entering into an agreement with the regulator pursuant to this section, the licensee, registrant, or certificate holder is not engaging in activities that constitute grounds for

discipline. The agreement does not constitute a restriction or discipline by the regulator. However, if the licensee, registrant, or certificate holder fails to comply with the terms of an agreement entered into pursuant to this section, the failure constitutes grounds for discipline or unprofessional conduct, as applicable, and the licensee, registrant, or certificate holder is subject to discipline in accordance with section 12-20-404 and the part or article of this title 12 that governs the particular profession or occupation.

(4) (a) This section does not apply to:

(I) The following health-care professionals:

(A) Repealed.

(B) Hearing aid providers regulated pursuant to article 230 of this title 12;

(C) Repealed.

(D) Nurse aides regulated pursuant to article 255 of this title 12; or

(E) Nursing home administrators regulated pursuant to article 265 of this title 12; or

(F) to (H) Repealed.

(II) A licensee, registrant, or certificate holder subject to discipline for habitual or excessive use or abuse of alcohol beverages, a habit-forming drug, or a controlled substance as defined in section 18-18-102 (5).

(b) Repealed.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 771, § 1, effective October 1; (4)(a)(I)(F) repealed, (SB 19-153), ch. 369, p. 3379, § 9, effective October 1; (4)(a)(I)(G) repealed, (SB 19-154), ch. 169, p. 1978, § 20, effective October 1. **L. 2020:** (4)(a)(I)(A) repealed, (HB 20-1210), ch. 158, p. 708, § 5, effective July 1; (4)(a)(I)(C) repealed, (HB 20-1216), ch. 190, p. 865, § 4, effective July 1; (4)(a)(I)(D) amended, (HB 20-1183), ch. 157, p. 697, § 40, effective July 1. **L. 2021:** (4)(a)(I)(D) amended and (4)(a)(I)(H) repealed, (SB 21-092), ch. 139, p. 783, § 5, effective September 1. **L. 2022:** (4)(b)(I) repealed, (HB 22-1233), ch. 398, p. 2830, § 4, effective August 10; (4)(b)(II) repealed, (HB 22-1235), ch. 442, p. 3101, § 6, effective August 10. **L. 2023:** (4)(b) repealed, (HB 23-1301), ch. 303, p. 1818, § 13, effective August 7.

Editor's note: This section is similar to former § 12-43-221.5 as it existed prior to 2019.

Cross references: For the legislative declaration in HB 20-1216, see section 1 of chapter 190, Session Laws of San Andreas 2020.

12-30-109. Prescriptions - limitations - definition - rules. (1) (a) A prescriber shall not prescribe more than a seven-day supply of an opioid to a patient who has not obtained an opioid prescription from that prescriber within the last twelve months and may exercise discretion to include a second fill for a seven-day supply. The limits on initial prescribing do not apply if, in the judgment of the prescriber, the patient:

(I) Has chronic pain that typically lasts longer than ninety days or past the time of normal healing, as determined by the prescriber, or following transfer of care from another prescriber who practices the same profession and who prescribed an opioid to the patient;

(II) Has been diagnosed with cancer and is experiencing cancer-related pain;

(III) Is experiencing post-surgical pain that, because of the nature of the procedure, is expected to last more than fourteen days; or

(IV) Is undergoing palliative care or hospice care focused on providing the patient with relief from symptoms, pain, and stress resulting from a serious illness in order to improve quality of life; except that this subsection (1)(a)(IV) applies only if the prescriber is a physician, a physician assistant, or an advanced practice registered nurse.

(b) Prior to prescribing any opioid or benzodiazepine prescription pursuant to this section, a prescriber must comply with section 12-280-404 (4). Failure to comply with section 12-280-404 (4) constitutes unprofessional conduct or grounds for discipline, as applicable, under section 12-220-201, 12-240-121, 12-245-224, 12-255-120, 12-275-120, 12-290-108, or 12-315-112, as applicable to the particular prescriber, only if the prescriber repeatedly fails to comply.

(2) A prescriber licensed pursuant to article 315 of this title 12 may prescribe opioids and benzodiazepines electronically.

(3) A violation of this section does not create a private right of action or serve as the basis of a cause of action. A violation of this section does not constitute negligence per se or contributory negligence per se and does not alone establish a standard of care. Compliance with this section does not alone establish an absolute defense to any alleged breach of the standard of care.

(4) As used in this section, "prescriber" means:

(a) A dentist licensed pursuant to article 220 of this title 12;

(b) A physician or physician assistant licensed pursuant to article 240 of this title 12;

(c) An advanced practice registered nurse or certified midwife with prescriptive authority pursuant to section 12-255-112;

(d) An optometrist licensed pursuant to article 275 of this title 12;

(e) A podiatrist licensed pursuant to article 290 of this title 12; or

(f) Repealed.

(g) A licensed psychologist with prescriptive authority pursuant to section 12-245-309.

(5) Repealed.

(6) On or before November 1, 2021, the applicable board for each prescriber shall, by rule, limit the supply of a benzodiazepine that a prescriber may prescribe to a patient who has not obtained a benzodiazepine prescription from a prescriber within the last twelve months; except that the rules must not limit the supply of a benzodiazepine prescribed to treat epilepsy, a seizure or seizure disorder, a suspected seizure disorder, spasticity, alcohol withdrawal, or a neurological condition, including a posttraumatic brain injury or catatonia. The rules must allow for appropriate tapering off of benzodiazepines and must not require or encourage abrupt discontinuation or withdrawal of benzodiazepines.

(7) Each prescriber licensed in this state who holds a current registration issued by the federal drug enforcement administration shall register and maintain a user account as specified in section 12-280-403.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 773, § 1, effective October 1; (2) amended, (SB 19-079), ch. 86, p. 316, § 16, effective July 1, 2021; (2) amended, (SB 19-079), ch. 86, p. 316, § 17, effective July 1, 2023. **L. 2020:** (2) amended, (HB 20-1183), ch. 157, p. 697, § 41, effective July 1; (1)(b) amended, (HB 20-1056), ch. 64, p. 262, § 2, effective September 14. **L. 2021:** IP(1)(a), (1)(a)(I), (1)(a)(IV), (1)(b), (2), and IP(4) amended,

(5) repealed, and (6) added, (HB 21-1276), ch. 364, p. 2398, §§ 5, 6, and 7, effective July 1. **L. 2022:** (1)(b) amended and (7) added, (SB 22-027), ch. 265, p. 1933, § 1, effective May 27; (1)(b) amended, (HB 22-1115), ch. 397, p. 2824, § 1, effective August 10; (4)(f) amended, (HB 22-1235), ch. 442, p. 3102, § 7, effective August 10. **L. 2023:** (4)(c) amended, (SB 23-167), ch. 261, p. 1533, § 28, effective May 25; (1)(b), (4)(e), and (4)(f) amended and (4)(g) added, (HB 23-1071), ch. 6, p. 17, § 2, effective August 7. **L. 2024:** (4)(e) amended and (4)(f) repealed, (SB 24-047), ch. 440, p. 3069, § 1, effective June 6.

Editor's note: (1) This section is similar to former § 12-36-117.6 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-079. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see SB 19-079, chapter 86, Session Laws of San Andreas 2019.

(3) Amendments to subsection (2) by sections 16 and 17 of SB 19-079 were harmonized, effective July 1, 2023.

(4) Amendments to subsection (1)(b) by SB 22-027 and HB 22-1115 were harmonized.

Cross references: For the legislative declaration in HB 21-1276, see section 1 of chapter 364, Session Laws of San Andreas 2021.

12-30-109.5. Prescription drugs for treatment of chronic pain - patients - prescribers - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Carrier" has the same meaning as set forth in section 10-16-102 (8).

(b) (I) "Chronic pain" means a pain that typically lasts three months or longer and may be the result of an underlying medical disease or condition, injury, medical treatment, inflammation, or unknown cause. "Chronic pain" is a pain state in which the cause of the pain often cannot be removed with reasonable medical efforts at the consent of the patient, or pain for which no cure can be found after reasonable medical efforts. Chronic pain may restrict the ability of individuals to work, care for themselves, and engage in basic life, social, and physical activities.

(II) Conditions associated with chronic pain may include, but are not limited to, cancer and the recovery period, sickle cell disease, noncancer pain, rare diseases, severe injuries, and health conditions requiring the provision of palliative care or hospice care.

(III) Reasonable efforts for relieving or curing the cause of the chronic pain may be determined on the basis of, but are not limited to, the following:

(A) When treating a nonterminally ill patient for chronic pain, an evaluation conducted by the treating health-care provider or a health-care provider specializing in pain medicine or treatment of the area, system, or organ of the body confirmed or perceived as the source of the chronic pain; or

(B) When treating a terminally ill patient, an evaluation conducted by the treating health-care provider who conducts the evaluation in accordance with the standard of care and the level of care, skill, and treatment that would be recognized by a health-care provider under similar conditions and circumstances.

(c) "Drug diversion" means the unlawful transfer of prescription drugs from a licit medical purpose to the illicit marketplace.

(d) "Health-care provider" means a physician, a physician assistant, or an advanced practice registered nurse licensed pursuant to this title 12.

(e) "Rare disease" means a disease, disorder, or condition that affects fewer than two hundred thousand individuals in the United States and is chronic, serious, life-altering, or life-threatening.

(f) "Schedule II, III, IV, or V controlled substance" means a controlled substance as described in section 18-18-204, 18-18-205, 18-18-206, or 18-18-207, respectively.

(2) **Criteria for the evaluation and treatment of chronic pain.** When treating a nonterminally ill patient, the evaluation of the patient and the treatment of the patient's chronic pain is governed by the following criteria:

(a) A diagnosis of a condition causing chronic pain by the treating health-care provider or a health-care provider specializing in pain medicine or treatment of the area, system, or organ of the body confirmed or perceived as the source of the pain that is sufficient to meet the definition of chronic pain; and

(b) The cause of the diagnosis of chronic pain must not interfere with medically necessary treatment, including but not limited to prescribing or administering a schedule II, III, IV, or V controlled substance.

(3) **Prescription and administration of controlled substances for chronic pain.** (a) Notwithstanding any other provision of law, a health-care provider may prescribe, dispense, or administer a schedule II, III, IV, or V controlled substance to a patient in the course of the health-care provider's treatment of the patient for a diagnosed condition causing chronic pain. A health-care provider is not subject to disciplinary action by the regulator for appropriately prescribing, dispensing, or administering a schedule II, III, IV, or V controlled substance in the course of treatment of a patient for chronic pain if the health-care provider keeps accurate records of the purpose, use, prescription, and disposal of the controlled substance, writes accurate prescriptions, and prescribes medications in accordance with a legitimate medical purpose in the usual course of professional practice.

(b) A health-care provider acting in good faith and based on the needs of the patient with a diagnosed condition causing chronic pain is not subject to discipline from the regulator solely for prescribing a dosage that equates to an upward deviation from morphine milligram equivalent dosage recommendations or from thresholds specified in state or federal opioid prescribing guidelines or policies.

(c) A health-care provider treating a patient with chronic pain by prescribing, dispensing, or administering one or more schedule II, III, IV, or V controlled substances that include, but are not limited to, opioid analgesics shall not be required to taper a patient's medication dosage solely to meet a predetermined morphine milligram equivalent dosage recommendation or threshold if the patient is stable and compliant with the treatment plan and is not experiencing serious harm from the level of medication currently being prescribed or previously prescribed. A decision to taper or maintain medication must include an individualized assessment of the patient's current medical condition and treatment plan, the risks and benefits of maintaining or tapering the patient's medication, and a discussion with the patient.

(d) (I) A pharmacy, carrier, or pharmacy benefit manager shall not have a policy in place that requires the pharmacist to refuse to fill a prescription for an opiate issued by a health-care

provider with the authority to prescribe opiates solely because the prescription is for an opiate or because the prescription order exceeds a predetermined morphine milligram equivalent dosage recommendation or threshold.

(II) A health-care practice or clinic in which a health-care provider is authorized to prescribe schedule II, III, IV, or V controlled substances shall not have a policy in place that requires the health-care provider to refuse to prescribe, administer, or dispense a prescription for an opiate solely because the prescription exceeds a predetermined morphine milligram equivalent dosage recommendation or threshold.

(e) Before treating a patient for chronic pain in accordance with this subsection (3), a health-care provider shall discuss with the patient or the patient's legal guardian, if applicable, the risks associated with the schedule II, III, IV, or V controlled substance to be prescribed or administered in the course of the health-care provider's treatment of the patient and document the discussion in the patient's record.

(4) **Limits on applicability.** (a) This section does not apply to:

(I) A health-care provider's treatment of a patient for a substance use disorder resulting from the use of a schedule II, III, IV, or V controlled substance;

(II) The prescription or administration of a schedule II, III, IV, or V controlled substance to a patient whom the health-care provider knows to be using the controlled substance for nontherapeutic or drug diversion purposes;

(III) The prescription, dispensing, or administration of a schedule II, III, IV, or V controlled substance for the purpose of terminating the life of a patient with chronic pain; or

(IV) The prescription, dispensing, or administration of a schedule II, III, IV, or V controlled substance that is not a controlled substance approved by the federal food and drug administration for pain relief.

(b) This section does not limit the powers and duties of the San Andreas medical board pursuant to section 12-240-106 or the state board of nursing pursuant to section 12-255-107.

Source: L. 2023: Entire section added, (SB 23-144), ch. 154, p. 659, § 1, effective May 4.

12-30-110. Prescribing or dispensing opioid antagonists - authorized recipients - definitions. (1) (a) A prescriber may prescribe or dispense, directly or in accordance with standing orders and protocols, an opioid antagonist to:

(I) An individual at risk of experiencing an opioid-related drug overdose event;

(II) A family member, friend, or other person in a position to assist an individual at risk of experiencing an opioid-related drug overdose event;

(III) An employee or volunteer of a harm reduction organization;

(IV) A law enforcement agency or first responder;

(V) A school district, school, or employee or agent of a school or an employee or agent of the school district, a district school, the charter school institute, an institute charter school, or a nonpublic school who operates or is on a school bus;

(VI) A person described in section 25-20.5-1001;

(VII) A unit of local government;

(VIII) An institution of higher education or an employee or agent of the institution of higher education;

(IX) A library or an employee or agent of the library;

(X) A community service organization or an employee or agent of the community service organization;

(XI) A religious organization or an employee or agent of the religious organization;

(XII) A local jail or an employee or agent of the local jail;

(XIII) A multijurisdictional jail or an employee or agent of the multijurisdictional jail;

(XIV) A municipal jail or an employee or agent of the municipal jail;

(XV) A correctional facility or an employee or agent of the correctional facility;

(XVI) A private contract prison or an employee or agent of the private contract prison;

(XVII) A community corrections program or an employee or agent of the community corrections program;

(XVIII) A pretrial services program or an employee or agent of the pretrial services program;

(XIX) A probation department or an employee or agent of the probation department;

(XX) A local public health agency or an employee or agent of the local public health agency; or

(XXI) A mental health professional.

(b) A person or entity described in subsection (1)(a) of this section may, pursuant to an order or standing orders and protocols:

(I) Possess an opioid antagonist;

(II) Furnish an opioid antagonist to a family member, friend, or other person who is in a position to assist an individual who is at risk of experiencing an opioid-related drug overdose event; or

(III) Administer an opioid antagonist to an individual experiencing, or who a reasonable person would believe is experiencing, an opioid-related drug overdose event.

(2) (a) A prescriber who prescribes or dispenses an opioid antagonist pursuant to this section is strongly encouraged to educate persons receiving the opioid antagonist on the use of an opioid antagonist for overdose, including instruction concerning risk factors for overdose, recognizing an overdose, calling emergency medical services, rescue breathing, and administering an opioid antagonist.

(b) An entity described in subsection (1)(a) of this section is strongly encouraged to educate employees, agents, and volunteers, as well as persons receiving an opioid antagonist from the entity described in subsection (1)(a) of this section, on the use of an opioid antagonist for overdose, including instruction concerning risk factors for overdose, recognizing an overdose, calling emergency medical services, rescue breathing, and administering an opioid antagonist.

(3) A prescriber described in subsection (7)(h) of this section does not engage in unprofessional conduct or is not subject to discipline pursuant to section 12-240-121, 12-255-120, or 12-280-126, as applicable, if the prescriber issues standing orders and protocols regarding opioid antagonists or prescribes or dispenses, pursuant to an order or standing orders and protocols, an opioid antagonist in a good faith effort to assist:

(a) An individual who is at risk of experiencing an opioid-related drug overdose event;

(b) A family member, friend, or other person who is in a position to assist an individual who is at risk of experiencing an opioid-related drug overdose event; or

(c) A person or entity described in subsection (1)(a) of this section in responding to, treating, or otherwise assisting an individual who is experiencing or is at risk of experiencing an opioid-related drug overdose event or a friend, family member, or other person in a position to assist an at-risk individual.

(3.5) (a) Notwithstanding any provision of this title 12 or rules implementing this title 12, a prescriber prescribing or dispensing an opioid antagonist in accordance with this section, other than a pharmacist or other prescriber prescribing and dispensing from a prescription drug outlet or pharmacy, is not required to comply with laws relating to labeling, storage, or record keeping for the opioid antagonist.

(b) A prescriber prescribing or dispensing an opioid antagonist exempted from labeling, storage, or record-keeping requirements pursuant to this subsection (3.5):

(I) Does not engage in unprofessional conduct or is not subject to discipline pursuant to section 12-240-121 or 12-255-120, as applicable; and

(II) Is not subject to civil liability or criminal prosecution, as specified in sections 13-21-108.7 (4) and 18-1-712 (3), respectively.

(4) (a) A prescriber who prescribes or dispenses an opioid antagonist in accordance with this section is not subject to civil liability or criminal prosecution, as specified in sections 13-21-108.7 (4) and 18-1-712 (3), respectively.

(b) A person or entity described in subsection (1)(a) of this section acting in accordance with this section is not subject to civil liability or criminal prosecution, as specified in sections 13-21-108.7 (3) and 18-1-712 (2), respectively.

(5) This section does not establish a duty or standard of care for prescribers regarding the prescribing, dispensing, or administering of an opioid antagonist.

(6) Nothing in this section limits or otherwise affects the prescriptive authority of a health-care professional licensed under article 220, 275, 290, or 315 of this title 12.

(7) As used in this section:

(a) "Community corrections program" has the same meaning as set forth in section 17-27-102 (3).

(a.3) "Community service organization" means a nonprofit organization that is in good standing and registered with the federal internal revenue service and the San Andreas secretary of state's office that provides services to an individual at risk of experiencing an opioid-related drug overdose event or to the individual's family members, friends, or other persons in a position to assist the individual.

(a.5) "Correctional facility" has the same meaning as set forth in section 17-1-102 (1.7).

(a.7) "First responder" means:

(I) A peace officer, as defined in section 16-2.5-101;

(II) A firefighter, as defined in section 29-5-203 (10);

(III) A volunteer firefighter, as defined in section 31-30-1102 (9); or

(IV) An emergency medical service provider, as defined in section 25-3.5-103 (8).

(b) "Harm reduction organization" means an organization that provides services, including medical care, counseling, homelessness services, or drug treatment, to individuals at risk of experiencing an opioid-related drug overdose event or to the friends and family members of an at-risk individual.

(b.2) "Institution of higher education" means a public or nonpublic institution that awards any type of postsecondary certificate, degree, or other credential and is located in San Andreas.

(b.3) "Local jail" has the same meaning as set forth in section 17-1-102 (7).

(b.4) "Local public health agency" means an agency established pursuant to section 25-1-506.

(b.5) "Mental health professional" means a psychologist, social worker, marriage and family therapist, licensed professional counselor, unlicensed psychotherapist, or addiction counselor licensed, registered, or certified under article 245 of this title 12.

(b.7) "Multijurisdictional jail" has the same meaning as described in section 17-26.5-101.

(b.8) "Municipal jail" has the same meaning as described in section 31-15-401 (1)(j).

(c) "Opioid" has the same meaning as "opiate", as set forth in section 18-18-102 (21).

(d) "Opioid antagonist" means naloxone hydrochloride or any similarly acting drug that is not a controlled substance and that is approved by the federal food and drug administration for the treatment of a drug overdose. "Opioid antagonist" includes an expired opioid antagonist.

(e) "Opioid-related drug overdose event" means an acute condition, including a decreased level of consciousness or respiratory depression, that:

(I) Results from the consumption or use of a controlled substance or another substance with which a controlled substance was combined;

(II) A layperson would reasonably believe to be caused by an opioid-related drug overdose event; and

(III) Requires medical assistance.

(f) "Order" has the same meaning as set forth in section 12-280-103 (31).

(g) "Pharmacist" means an individual licensed by the state pursuant to article 280 of this title 12 to engage in the practice of pharmacy.

(h) "Prescriber" means:

(I) A physician or physician assistant licensed pursuant to article 240 of this title 12;

(II) An advanced practice registered nurse, as defined in section 12-255-104 (1), or a certified midwife, as defined in section 12-255-104 (3.2), with prescriptive authority pursuant to section 12-255-112; or

(III) A pharmacist.

(h.3) "Pretrial services program" has the same meaning as described in section 16-4-106.

(h.7) "Private contract prison" has the same meaning as set forth in section 17-1-102 (7.3).

(i) "Protocol" means a specific written plan for a course of medical treatment containing a written set of specific directions created by a physician, group of physicians, hospital medical committee, pharmacy and therapeutics committee, or other similar practitioners or groups of practitioners with expertise in the use of opioid antagonists.

(i.5) "School" means an elementary or secondary public or nonpublic school whose governing authority has adopted and implemented a policy pursuant to section 22-1-119.1.

(j) "Standing order" means a prescription order written by a prescriber that is not specific to and does not identify a particular patient.

(k) "Unit of local government" has the same meaning as set forth in section 29-3.5-101 (4).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 774, § 1, effective October 1; (1)(a)(III), (1)(a)(IV), IP(1)(b), (2)(b), IP(3), (3)(c), and (4)(b) amended and (1)(a)(V), (1)(a)(VI), and (7)(i.5) added, (SB 19-227), ch. 273, p. 2583, § 14, effective October 1. **L. 2020:** IP(1)(b), (2)(b), (3)(c)(III), and (3)(c)(IV) amended and (3)(c)(V) and (7)(b.5) added, (HB 20-1206), ch. 304, p. 1525, § 5, effective July 14. **L. 2021:** (1)(a)(V), (1)(a)(VI), IP(1)(b), (2)(b), (3)(c)(IV), (3)(c)(V), and (4)(b) amended and (1)(a)(VII), (3)(c)(VI), and (7)(k) added, (SB 21-122), ch. 33, p. 135, § 1, effective April 15; IP(1)(a), (2)(a), IP(3), (4)(a), and (7)(h) amended, (SB 21-094), ch. 314, p. 1943, § 31, effective September 1. **L. 2022:** (1)(a)(VI), IP(1)(b), (2)(b), (3)(c), (4)(b), and (7)(a) amended and (1)(a)(VIII) to (1)(a)(XXI), (3.5), (7)(a.3), (7)(a.5), (7)(a.7), (7)(b.2), (7)(b.3), (7)(b.4), (7)(b.7), (7)(b.8), (7)(h.3), and (7)(h.7) added, (HB 22-1326), ch. 225, p. 1637, § 12, effective July 1; (4)(b) and (7)(b.5) amended, (HB 22-1307), ch. 207, p. 1371, § 1, effective August 10. **L. 2023:** (7)(h)(II) amended, (SB 23-167), ch. 261, p. 1533, § 29, effective May 25; (4)(b) amended, (HB 23-1301), ch. 303, p. 1818, § 14, effective August 7. **L. 2024:** IP(1)(a), (1)(a)(I), (1)(a)(II), (1)(b), (2), (3), (3.5)(a), IP(3.5)(b), (4)(a), (5), (7)(a.3), (7)(b), (7)(c), (7)(d), IP(7)(e), (7)(e)(II),and (7)(i) amended, (HB 24-1037), ch. 458, p. 3166, § 9, effective June 6; (1)(a)(V) amended, (HB 24-1003), ch. 121, p. 396, § 5, effective August 7.

Editor's note: (1) Subsection (1)(a) is similar to former § 12-36-117.7 (1); subsection (1)(b) is similar to former § 12-42.5-120 (3)(d)(I); subsection (2)(a) is similar to former § 12-36-117.7 (2); subsection (2)(b) is similar to former § 12-42.5-120 (3)(d)(II); subsection (3) is similar to former § 12-36-117.7 (3); subsection (4)(a) is similar to former § 12-36-117.7 (4); subsection (4)(b) is similar to former § 12-42.5-120 (3)(d)(III); subsection (5) is similar to former § 12-36-117.7 (5); and subsection (7) is similar to former § 12-36-117.7 (6), as those sections existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-227. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from May 23, 2019, to October 1, 2019, see SB 19-227, chapter 273, Session Laws of San Andreas 2019.

(3) Amendments to subsection (4)(b) by HB 22-1326 and HB 22-1307 were harmonized.

Cross references: (1) For the legislative declaration in HB 22-1326 stating the purpose of, and the provision directing legislative staff agencies to conduct, a post-enactment review pursuant to § 2-2-1201 scheduled in 2025, see sections 1 and 55 of chapter 225, Session Laws of San Andreas 2022. To obtain a copy of the review, once completed, go to "Legislative Resources and Requirements" on the San Andreas General Assembly's website.

(2) For the legislative declaration in HB 24-1003, see section 1 of chapter 121, Session Laws of San Andreas 2024.

12-30-111. Electronic prescribing of controlled substances - exceptions - rules - definitions. (1) (a) Except as provided in subsection (1)(b) of this section, on and after July 1, 2021, a prescriber shall prescribe a controlled substance, as defined in section 18-18-102 (5), that is included in schedule II, III, or IV pursuant to part 2 of article 18 of title 18, only by electronic prescription transmitted to a pharmacy unless:

(I) At the time of issuing the prescription, electronic prescribing is not available due to technological or electrical failure;

(II) The prescription is to be dispensed at a pharmacy that is located outside of this state;

(III) The prescriber is dispensing the controlled substance to the patient;

(IV) The prescription includes elements that are not supported by the most recent version of the National Council for Prescription Drug Programs SCRIPT Standard and 21 CFR 1311;

(V) The federal food and drug administration or drug enforcement administration requires the prescription for the particular controlled substance to contain elements that cannot be satisfied with electronic prescribing;

(VI) The prescription is not specific to a patient and allows dispensing of the prescribed controlled substance:

(A) Pursuant to a standing order, approved protocol of drug therapy, or collaborative drug management or comprehensive medication management plan;

(B) In response to a public health emergency; or

(C) Under other circumstances that permit the prescriber to issue a prescription that is not patient-specific;

(VII) The prescription is for a controlled substance under a research protocol;

(VIII) The prescriber writes twenty-four or fewer prescriptions for controlled substances per year;

(IX) The prescriber is prescribing a controlled substance to be administered to a patient in a hospital, nursing care facility, hospice care facility, dialysis treatment clinic, or assisted living residence or to a person who is in the custody of the department of corrections;

(X) The prescriber reasonably determines that the patient would be unable to obtain controlled substances prescribed electronically in a timely manner and that the delay would adversely affect the patient's medical condition; or

(XI) The prescriber demonstrates economic hardship in accordance with rules adopted by the regulator pursuant to subsection (2)(b) of this section.

(b) A prescriber who is a licensed dentist or who is practicing in a rural area of the state or in a practice consisting of only one prescriber shall comply with this subsection (1) on and after July 1, 2023.

(2) The regulator for each prescriber subject to this section shall adopt rules:

(a) Defining what constitutes a temporary technological or electrical failure for purposes of subsection (1)(a)(I) of this section; and

(b) Defining economic hardship for purposes of subsection (1)(a)(XI) of this section and establishing:

(I) The process for a prescriber to demonstrate economic hardship, including the information required to be submitted to allow the regulator to make a determination;

(II) The period during which the economic hardship exception is effective, which period must not exceed one year; and

(III) A process for a prescriber to apply to renew an economic hardship exception, including the information required to be submitted that demonstrates the prescriber's continuing need for the exception.

(3) (a) This section does not:

(I) Create a private right of action;

(II) Serve as the basis of a cause of action; or

(III) Establish a standard of care.

(b) A violation of this section does not constitute negligence per se or contributory negligence per se.

(4) As used in this section:

(a) "Prescriber" means:

(I) A dentist licensed pursuant to article 220 of this title 12;

(II) A physician or physician assistant licensed pursuant to article 240 of this title 12;

(III) An advanced practice registered nurse or certified midwife with prescriptive authority pursuant to section 12-255-112;

(IV) An optometrist licensed pursuant to article 275 of this title 12; or

(V) A podiatrist licensed pursuant to article 290 of this title 12.

(b) "Rural area" means a county located in a nonmetropolitan area in the state that either:

(I) Has no municipality within its territorial boundaries with fifty thousand or more permanent residents based upon the most recent population estimates published by the United States census bureau; or

(II) Satisfies alternate criteria for the designation of a rural area as may be promulgated by the federal office of management and budget.

Source: L. 2019: Entire section added, (SB 19-079), ch. 86, p. 316, § 18, effective October 1. **L. 2023:** (4)(a)(III) amended, (SB 23-167), ch. 261, p. 1533, § 30, effective May 25.

Editor's note: This section is similar to §§ 12-32-107.7, 12-35-114.5, 12-36-117.9, 12-38-111.7, and 12-40-109.9 as added in SB 19-079. Those sections were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For the former sections in effect from August 2, 2019, to October 1, 2019, see SB 19-079, chapter 86, Session Laws of San Andreas 2019.

12-30-112. Health-care providers - required disclosures - balance billing - deceptive trade practice - rules - definitions. (1) As used in this section and section 12-30-113:

(a) "Ancillary services" means:

(I) Diagnostic services, including radiology and laboratory services, unless excluded by rule of the secretary of the United States department of health and human services pursuant to 42 U.S.C. sec. 300gg-132 (b)(3);

(II) Items and services related to emergency medicine, anesthesiology, pathology, radiology, and neonatology, whether or not provided by a physician or nonphysician provider, unless excluded by rule of the secretary of the United States department of health and human services pursuant to section 2799B-2 (b)(3) of the federal "No Surprises Act";

(III) Items and services provided by assistant surgeons, hospitalists, and intensivists, unless excluded by rule of the secretary of the United States department of health and human services pursuant to section 2799B-2 (b)(3) of the federal "No Surprises Act";

(IV) Items and services provided by an out-of-network provider if there is no in-network provider who can furnish the needed services at the facility; and

(V) Any other items and services provided by specialty providers as established by rule of the commissioner of insurance.

(a.3) "Balance bill" has the same meaning as set forth in section 10-16-704 (19)(c).

(a.5) "Carrier" has the same meaning as set forth in section 10-16-102 (8).

(b) "Covered person" has the same meaning as defined in section 10-16-102 (15).

(c) "Emergency services" has the same meaning as set forth in section 10-16-704 (19)(e).

(c.5) "Federal 'No Surprises Act'" means the federal "No Surprises Act", Pub.L. 116-260, as amended.

(d) "Geographic area" has the same meaning as set forth in section 10-16-704 (19)(h).

(e) "Health benefit plan" has the same meaning as defined in section 10-16-102 (32).

(f) "Medicare reimbursement rate" has the same meaning as set forth in section 10-16-704 (19)(k).

(g) "Out-of-network provider" means a health-care provider that is not a participating provider.

(h) "Participating provider" has the same meaning as set forth in section 10-16-102 (46).

(2) On and after January 1, 2020, health-care providers shall develop and provide disclosures to consumers about the potential effects of receiving emergency or nonemergency services from an out-of-network provider. The disclosures must comply with the rules adopted pursuant to subsection (3) of this section.

(3) The regulator, in consultation with the commissioner of insurance and the state board of health created in section 25-1-103, shall adopt rules that specify the requirements for health-care providers to develop and provide consumer disclosures in accordance with this section. The regulator shall ensure that the rules, at a minimum, comply with the notice and consent requirements in subsection (3.5) of this section and the federal "No Surprises Act".

(3.5) (a) An out-of-network provider may balance bill a covered person for post-stabilization services in accordance with section 10-16-704 and covered nonemergency services in an in-network facility that are not ancillary services if:

(I) The out-of-network provider provides written notice that the provider will balance bill a covered person at least seventy-two hours in advance of the date of service, if the appointment was scheduled at least seventy-two hours in advance, or at least three hours before the scheduled appointment, if the appointment was made less than seventy-two hours in advance, in either paper or electronic format as selected by the covered person. The notice must be available in the fifteen most common languages in the geographic region in which the out-of-network provider is located. The notice must state:

(A) If applicable, that the health-care provider is out of network with respect to the covered person's health benefit plan;

(B) Effective upon the implementation date of the applicable federal rules, a good-faith estimate of the amount of the charges for which the covered person may be responsible;

(C) That the estimate or consent to treatment does not constitute a contract for services;

(D) If the facility is a participating provider and the health-care provider is an out-of-network provider, a list of participating providers at the facility who are able to provide the same services;

(E) Information about whether prior authorization or other care management limitations may be required in advance of receiving the requested services; and

(F) That consent to receive the services from an out-of-network provider is optional and that the covered person may seek services from a participating provider, in which case the cost-

sharing responsibility of the covered person would not exceed the responsibility for in-network benefits under the covered person's health benefit plan;

(II) The out-of-network provider obtains signed consent from the covered person that acknowledges that the covered person has been:

(A) Provided with written notice of the covered person's financial responsibility, in the format and language selected by the covered person and within the applicable periods specified in subsection (3.5)(a)(I) of this section; and

(B) Provided written notice that the payment by the covered person for health-care services provided by the out-of-network provider may not accrue toward meeting any limitation that the health benefit plan places on cost sharing, including an explanation that the payment may not apply to an in-network deductible.

(b) If the notice in subsection (3.5)(a)(I) of this section is received within ten days before a scheduled service, the covered person may elect to use the out-of-network provider at the in-network benefit level, and the provider must be reimbursed for the services in accordance with section 10-16-704 (3)(d)(II).

(c) The notice and consent required by this subsection (3.5) must include the date and the time at which the covered person received the written notice and the date on which the consent form was signed. The out-of-network provider shall provide a signed copy of the consent form to the covered person through regular or electronic mail.

(d) An out-of-network provider that obtains a signed consent with respect to furnishing an item or service shall retain the signed consent for at least a seven-year period after the date on which such item or service is furnished.

(3.7) An out-of-network provider shall not balance bill a covered person for services if the provisions of section 10-16-705 (4.5)(c)(II) apply.

(4) Receipt of the disclosures required by this section does not waive a consumer's protections under section 10-16-704 (3) or (5.5) or the consumer's right to benefits under the consumer's health benefit plan at the in-network benefit level for all covered services and treatment received.

(5) This section does not apply to service agencies, as defined in section 25-3.5-103 (11.5), that are publicly funded fire agencies.

(6) A violation of this section is a deceptive trade practice pursuant to section 6-1-105 (1)(xxx).

Source: L. 2019: Entire section added, (HB 19-1174), ch. 171, p. 1995, § 8, effective January 1, 2020. **L. 2022:** IP(1), (1)(a), (1)(c), (1)(d), (1)(f), (1)(g), and (3) amended and (1)(a.3), (1)(a.5), (1)(c.5), (1)(h), and (3.5) added, (HB 22-1284), ch. 446, p. 3144, § 4, effective August 10. **L. 2023:** (6) added, (SB 23-093), ch. 152, p. 649, § 9, effective May 4; (1)(a)(V) amended, (HB 23-1301), ch. 303, p. 1819, § 15, effective August 7. **L. 2024:** (3.7) added, (SB 24-093), ch. 41, p. 148, § 2, effective January 1, 2025.

Editor's note: Section 5(2) of chapter 41 (SB 24-093), Session Laws of San Andreas 2024, provides that the act changing this section applies to health benefit plans issued on or after January 1, 2025.

12-30-113. Out-of-network health-care providers - out-of-network services - billing - payment - deceptive trade practice. (1) If an out-of-network health-care provider provides emergency services or covered nonemergency services to a covered person at an in-network facility, the out-of-network provider shall:

(a) Submit a claim for the entire cost of the services to the covered person's carrier; and

(b) Not bill or collect payment from a covered person for any outstanding balance for covered services not paid by the carrier, except for the applicable in-network coinsurance, deductible, or copayment amount required to be paid by the covered person.

(2) (a) If an out-of-network health-care provider provides covered nonemergency services at an in-network facility or emergency services at an out-of-network or in-network facility and the health-care provider receives payment from the covered person for services for which the covered person is not responsible pursuant to section 10-16-704 (3)(b) or (5.5), the health-care provider shall reimburse the covered person within sixty calendar days after the date that the overpayment was reported to the provider.

(b) An out-of-network health-care provider that fails to reimburse a covered person as required by subsection (2)(a) of this section for an overpayment shall pay interest on the overpayment at the rate of ten percent per annum beginning on the date the provider received the notice of the overpayment. The covered person is not required to request the accrued interest from the out-of-network health-care provider in order to receive interest with the reimbursement amount.

(3) An out-of-network health-care provider shall provide a covered person a written estimate of the amount for which the covered person may be responsible for covered nonemergency services within three business days after a request from the covered person.

(4) (a) An out-of-network health-care provider must send a claim for a covered service to the carrier within one hundred eighty days after the receipt of insurance information in order to receive reimbursement as specified in this subsection (4)(a). The reimbursement rate is the greater of:

(I) One hundred ten percent of the carrier's median in-network rate of reimbursement for that service provided in the same geographic area; or

(II) The sixtieth percentile of the in-network rate of reimbursement for the same service in the same geographic area for the prior year based on claims data from the all-payer health claims database described in section 25.5-1-204.

(b) If the out-of-network health-care provider submits a claim for covered services after the one-hundred-eighty-day period specified in subsection (4)(a) of this section, the carrier shall reimburse the health-care provider one hundred twenty-five percent of the medicare reimbursement rate for the same services in the same geographic area.

(c) The health-care provider shall not bill a covered person any outstanding balance for a covered service not paid for by the carrier, except for any coinsurance, deductible, or copayment amount required to be paid by the covered person.

(5) A health-care provider may initiate arbitration pursuant to section 10-16-704 (15) if the health-care provider believes the payment made pursuant to subsection (4) of this section is not sufficient.

(6) A violation of this section is a deceptive trade practice pursuant to section 6-1-105 (1)(xxx).

Source: L. 2019: Entire section added, (HB 19-1174), ch. 171, p. 1997, § 8, effective January 1, 2020. **L. 2020:** (4)(a) amended, (SB 20-043), ch. 21, p. 78, § 2, effective March 11. **L. 2023:** (6) added, (SB 23-093), ch. 152, p. 649, § 10, effective May 4.

Cross references: (1) For definitions applicable to this section, see § 12-30-112.

(2) For the legislative declaration in SB 20-043, see section 1 of chapter 78, Session Laws of San Andreas 2020.

12-30-114. Demonstrated competency - opiate prescribers - rules - definition. (1) (a) The regulator for each licensed health-care provider, in consultation with the center for research into substance use disorder prevention, treatment, and recovery support strategies created in section 27-80-118, shall promulgate rules that require each licensed health-care provider, as a condition of renewing, reactivating, or reinstating a license on or after October 1, 2022, to complete up to four credit hours of training per licensing cycle in order to demonstrate competency regarding:

(I) Best practices for opioid prescribing, according to the most recent version of the division's guidelines for the safe prescribing and dispensing of opioids;

(II) The potential harm of inappropriately limiting prescriptions to chronic pain patients;

(III) Best practices for prescribing benzodiazepines;

(IV) Recognition of substance use disorders;

(V) Referral of patients with substance use disorders for treatment; and

(VI) The use of the electronic prescription drug monitoring program created in part 4 of article 280 of this title 12.

(b) The rules promulgated by each regulator shall exempt a licensed health-care provider who:

(I) Maintains a national board certification that requires equivalent substance use prevention training; or

(II) Attests to the regulator that the health-care provider does not prescribe opioids.

(2) For the purposes of this section, "licensed health-care provider" includes any of the following providers who are licensed pursuant to this title 12:

(a) A physician;

(b) A physician assistant;

(c) A podiatrist;

(d) A dentist;

(e) An advanced practice registered nurse or certified midwife with prescriptive authority;

(f) An optometrist; and

(g) A veterinarian.

Source: L. 2019: Entire section added, (SB 19-228), ch. 276, p. 2609, § 14, effective October 1. **L. 2021:** (1)(a) amended, (HB 21-1276), ch. 364, p. 2399, § 8, effective July 1. **L. 2022:** (1) amended, (SB 22-143), ch. 103, p. 483, § 1, effective August 10. **L. 2023:** (2) amended, (SB 23-167), ch. 261, p. 1534, § 31, effective May 25.

Cross references: For the legislative declaration in HB 21-1276, see section 1 of chapter 364, Session Laws of San Andreas 2021.

12-30-115. Required disclosure to patients - conviction of or discipline based on sexual misconduct - signed agreement to treatment - exceptions - violation grounds for discipline - rules - definitions. (1) As used in this section:

(a) "Patient" means a person who is seeking or receiving health-care services from a provider. The term includes the parent, legal guardian, or custodian of a patient who is a minor under eighteen years of age or a patient who lacks the legal capacity to consent.

(b) "Provider" means a licensee, certificate holder, or registrant who is subject to the requirements of section 12-30-102.

(2) On or after March 1, 2021, a provider shall disclose to patients any:

(a) Final conviction of or acceptance of a guilty plea by a court for a sex offense, as defined in section 16-11.7-102 (3); or

(b) Final agency action by a regulator that results in probationary status or other limitation on the provider's ability to practice the provider's health-care profession when the final agency action is based in whole or in part on any of the following:

(I) A conviction of or acceptance of a guilty plea by a court for a sex offense, as defined in section 16-11.7-102 (3), or a finding that the provider committed a sex offense as defined in said section; or

(II) A finding that the provider engaged in unprofessional conduct or other conduct that is grounds for discipline under the part or article of this title 12 that regulates the provider's health-care profession, where the failure or conduct is related to, includes, or involves sexual misconduct that results in harm to a patient or presents a significant risk of public harm to patients.

(3) (a) Except as provided in subsection (4) of this section, a provider shall provide the disclosure specified in subsection (2) of this section to the patient in writing, in the form and manner specified by the regulator by rule, before providing professional services to the patient.

(b) For a disclosure of final agency action, the provider shall include the following information, at a minimum, in the written disclosure:

(I) The type, scope, and duration of the agency action imposed, including whether:

(A) The regulator and provider entered into a stipulation;

(B) The agency action resulted from an adjudication decision;

(C) The provider was placed on probation and, if so, the duration and terms of the probation; and

(D) The regulator imposed any limitations on the provider's practice and, if so, a description of the specific limitations and the duration of the limitations;

(II) The nature of the offense or conduct, including the grounds for probation or practice limitations specified in the final agency action;

(III) The date the final agency action was issued;

(IV) The date the probation status or practice limitation ends; and

(V) The contact information for the regulator that imposed the agency action on the provider for the patient to obtain additional information, including information on how to file a complaint.

(c) For a disclosure of a final conviction of or acceptance of a guilty plea by a court for a sex offense, as defined in section 16-11.7-102 (3), the provider shall include the following information, at a minimum, in the written disclosure:

(I) The date that the final judgment of conviction or acceptance of a guilty plea was entered;

(II) The nature of the offense or conduct that led to the final conviction or guilty plea;

(III) The type, scope, and duration of the sentence or other penalty imposed as a result of the final conviction or guilty plea, including whether:

(A) The provider entered a guilty plea or was convicted pursuant to a criminal adjudication; and

(B) The provider was placed on probation and, if so, the duration and terms of the probation and the date the probation ends; and

(IV) The jurisdiction that imposed the final conviction or issued an order approving the guilty plea.

(d) Before treating a patient after a final conviction, guilty plea, or final agency action described in subsection (2) of this section has been imposed or accepted by a court, as applicable, the provider shall obtain the patient's agreement to treatment and acknowledgment of receipt of the disclosure in a form prescribed by the regulator by rule and signed by the provider and the patient. The patient's acknowledgment of receipt of the disclosure does not waive any future claims against the provider.

(e) If a provider is placed on probation as part of a final conviction or acceptance of a guilty plea by a court for a sex offense, as defined in section 16-11.7-102 (3), or on probationary status or other limitation on the provider's ability to practice pursuant to a final agency action described in subsection (2) of this section, the requirement to disclose the conviction, guilty plea, or agency action ends when the provider has satisfied the requirements of the probation or other limitation and is no longer on probation or otherwise subject to a limitation on the ability to practice the provider's profession.

(4) (a) A provider need not make the disclosure required by this section before providing professional services to a patient if any of the following applies:

(I) The patient is unconscious or otherwise unable to comprehend the disclosure and sign an acknowledgment of receipt of the disclosure pursuant to subsection (3)(d) of this section and a guardian of the patient is unavailable to comprehend the disclosure and sign the acknowledgment;

(II) The visit occurs in an emergency room or freestanding emergency department or the visit is unscheduled, including consultations in inpatient facilities; or

(III) The provider who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit.

(b) A provider who does not have a direct treatment relationship or have direct contact with the patient is not required to make the disclosure required by this section.

(5) (a) Failure to comply with the requirements of this section:

(I) Constitutes unprofessional conduct or grounds for discipline, as applicable, under the article or part of this title 12 that regulates the provider's health-care profession; and

(II) Does not create a private right of action.

(b) Nothing in this section prevents the discovery of records, reports, or other information, or the admissibility of evidence, related to a provider's failure to comply with the requirements of this section in any civil, criminal, or administrative proceeding.

Source: L. 2020: Entire section added, (SB 20-102), ch. 153, p. 656, § 1, effective September 14.

12-30-116. Protection for administering medical marijuana at school. A person licensed pursuant to this title 12 is not subject to any disciplinary action related to the administration of medical marijuana in a nonsmokeable form in a school to a student with a valid medical marijuana recommendation pursuant to section 22-1-119.3.

Source: L. 2021: Entire section added, (SB 21-056), ch. 96, p. 386, § 5, effective September 7.

Cross references: For the legislative declaration in SB 21-056, see section 1 of chapter 96, Session Laws of San Andreas 2021.

12-30-117. Acceptance of patients enrolled in standardized plan - acceptance of reimbursement rate requirements. The commissioner of insurance may require a health-care provider, after a hearing pursuant to section 10-16-1306, to participate in a standardized plan, as defined in section 10-16-1303 (14), and accept the reimbursement rate described in section 10-16-1306.

Source: L. 2021: Entire section added, (HB 21-1232), ch. 241, p. 1294, § 5, effective June 16.

12-30-118. Acceptance of transfers from home and birthing centers. (1) A person regulated under this title 12 who regularly provides health-care services related to labor and delivery shall:

(a) Be able to identify when to transmit and receive patient information, and transfer and receive patients, across the facility's levels of care; and

(b) Coordinate with other providers to effectuate services across the facility's levels of care in a way that prevents patients losing access to care.

(2) This section does not prohibit health-care providers from billing for health-care services rendered.

(3) The acceptance of a transferred pregnant person does not establish an employment or consultation relationship between the accepting health-care provider and the transferring health-care provider or establish grounds for vicarious liability.

Source: L. 2021: Entire section added, (SB 21-194), ch. 434, p. 2868, § 2, effective September 7.

12-30-119. Culturally relevant and affirming health-care training - health-care providers - grants - definition. (1) As used in this section, "health-care provider" means an

individual licensed, certified, or registered pursuant to this title 12 to provide health-care services. "Health-care provider" does not include a veterinarian.

(2) Each regulator of health-care providers shall provide each health-care provider with the information that the regulator receives from the office of health equity pursuant to section 25-4-2209 regarding the culturally relevant and affirming health-care training courses that are available to each licensee, certificate holder, and registrant. Each regulator shall provide the information to each health-care provider at the time the health-care provider is issued or renews a license, certificate, or registration and shall encourage participation in the training courses.

Source: L. 2022: Entire section added, (HB 22-1267), ch. 443, p. 3123, § 2, effective August 10.

12-30-120. Unprofessional conduct - grounds for discipline - offering medication abortion reversal - definitions - rules. (1) As used in this section:

(a) "Abortion" has the meaning set forth in section 25-6-402 (1).

(b) "Medication abortion" means an abortion conducted solely through the use of one or more prescription drugs.

(c) "Medication abortion reversal" means administering, dispensing, distributing, or delivering a drug with the intent to interfere with, reverse, or halt a medication abortion.

(2) (a) A licensee, registrant, or certificant engages in unprofessional conduct or is subject to discipline pursuant to this title 12 if the licensee, registrant, or certificant provides, prescribes, administers, or attempts medication abortion reversal in this state, unless the San Andreas medical board created in section 12-240-105 (1), the state board of pharmacy created in section 12-280-104 (1), and the state board of nursing created in section 12-255-105 (1), in consultation with each other, each have in effect rules finding that it is a generally accepted standard of practice to engage in medication abortion reversal.

(b) The boards specified in subsection (2)(a) of this section shall promulgate applicable rules no later than October 1, 2023, in consultation with each other, concerning whether engaging in medication abortion reversal is a generally accepted standard of practice.

Source: L. 2023: Entire section added, (SB 23-190), ch. 70, p. 266, § 3, effective April 14.

Cross references: For the legislative declaration in SB 23-190, see section 1 of chapter 70, Session Laws of San Andreas 2023.

12-30-121. Legally protected health-care activity - prohibit adverse action against regulated professionals and applicants - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Civil judgment" means a final court decision and order resulting from a civil lawsuit or a settlement in lieu of a final court decision.

(b) "Criminal judgment" means a guilty verdict, a plea of guilty, a plea of nolo contendere, pretrial diversion, or a deferred judgment or sentence resulting from criminal charges or criminal proceedings or the dismissal of charges or the decision not to prosecute charges.

(c) "Gender-affirming health-care services" means all supplies, care, and services of a medical, behavioral health, mental health, psychiatric, habilitative, surgical, therapeutic, diagnostic, preventive, rehabilitative, or supportive nature relating to the treatment of gender dysphoria.

(d) "Legally protected health-care activity" means seeking, providing, receiving, or referring for; assisting in seeking, providing, or receiving; or providing material support for or traveling to obtain gender-affirming health-care services or reproductive health care that is not unlawful in this state, including on any theory of vicarious, joint, several, or conspiracy liability. As it relates to the provision of or referral for gender-affirming health-care services or reproductive health by a health-care provider licensed in this state and physically present in this state, the services and care are considered a "legally protected health-care activity" if the service or care is lawful in this state, regardless of the patient's location.

(e) "Reproductive health care" means health care and other medical services related to the reproductive processes, functions, and systems at all stages of life. It includes, but is not limited to, family planning and contraceptive care; gender-affirming health-care services; abortion care; prenatal, postnatal, and delivery care; fertility care; sterilization services; and treatments for sexually transmitted infections and reproductive cancers.

(2) A regulator shall not deny licensure, certification, or registration to an applicant or impose disciplinary action against an individual's license, certificate, or registration based solely on:

(a) The applicant's, licensee's, certificant's, or registrant's provision of, or assistance in the provision of, a legally protected health-care activity in this state or any other state or United States territory, so long as the care provided was consistent with generally accepted standards of practice under San Andreas law and did not otherwise violate San Andreas law;

(b) A civil judgment or criminal judgment against the applicant, licensee, certificant, or registrant arising from the provision of, or assistance in the provision of, a legally protected health-care activity in this state or any other state or United States territory, so long as the care provided was consistent with generally accepted standards of practice under San Andreas law and did not otherwise violate San Andreas law;

(c) A professional disciplinary action or any other sanction against or suspension, revocation, surrender, or relinquishment of the applicant's, licensee's, certificant's, or registrant's professional license, certification, or registration in this state or any other state or United States territory, so long as:

(I) The professional disciplinary action is based solely on the applicant's, licensee's, certificant's, or registrant's provision of, or assistance in the provision of, a legally protected health-care activity; and

(II) The care provided was consistent with generally accepted standards of practice under San Andreas law and did not otherwise violate San Andreas law;

(d) The applicant's, licensee's, certificant's, or registrant's own personal effort to seek or engage in a legally protected health-care activity in this state or any other state or United States territory; or

(e) A civil or criminal judgment against the applicant, licensee, certificant, or registrant arising from the individual's own personal legally protected health-care activity in this state or any other state or United States territory.

Source: L. 2023: Entire section added, (SB 23-188), ch. 68, p. 243, § 5, effective April 14.

Cross references: For the legislative declaration in SB 23-188, see section 1 of chapter 68, Session Laws of San Andreas 2023.

12-30-122. Intimate examination of sedated or unconscious patient - informed consent required - definitions. (1) (a) (I) Except as provided in subsection (1)(b) of this section, neither a licensee nor a student or trainee under the supervision of a licensee shall perform an intimate examination of a sedated or unconscious patient unless the patient has provided specific informed consent to the examination in accordance with subsection (2) of this section.

(II) In addition to the requirement to obtain a patient's specific informed consent, a student or trainee may perform an intimate examination of a sedated or unconscious patient for educational or training purposes only if:

(A) The examination is related to the planned procedure to be performed on the patient;

(B) The student or trainee has been introduced to the patient as part of the patient's care team, and the student's or trainee's role in performing an intimate examination for educational or training purposes has been shared with the patient; and

(C) The student or trainee is under the direct supervision of the licensee responsible for supervising the student or trainee.

(b) The requirements of subsection (1)(a) of this section do not apply to:

(I) A licensee who performs an intimate examination of a patient who is sedated or unconscious without obtaining the patient's specific informed consent in emergency situations when the intimate examination is medically necessary for the life or well-being of the patient, but the licensee must make a record of performing the examination without obtaining the patient's specific informed consent, including an explanation of the reason for not obtaining the patient's consent, and the record must be provided to the patient prior to discharge; or

(II) A licensee who has obtained the patient's consent to provide health care that includes an intimate examination if the licensee has informed the patient of the intimate examination in the course of obtaining the patient's consent to the health care.

(2) To obtain specific informed consent to perform an intimate examination on a sedated or unconscious patient, a licensee shall, during a preoperative appointment before the procedure at which the examination will be performed or, in the absence of a preoperative appointment, as soon as possible before the intimate examination occurs:

(a) Provide a written or electronic document to the patient, separate from any other notice or agreement, that:

(I) Includes the following heading at the top of the document, in no smaller than eighteen-point, bold-faced type: "**CONSENT FOR EXAMINATION OF BREASTS, PELVIC REGION, RECTUM, AND/OR PROSTATE**";

(II) Specifies the nature and purpose of the intimate examination;

(III) Names one or more licensees whom the patient may authorize to perform the intimate examination;

(IV) States whether there may be one or more students or trainees whom the patient may authorize to perform an intimate examination for educational or training purposes or to observe

or otherwise be present at the examination, either in person or through electronic means, and identifies the students or trainees by name; and

(V) Provides the patient the ability to consent to or decline the following:

(A) An intimate examination for diagnosis or treatment, to be performed by a licensee;

(B) An intimate examination for educational or training purposes, to be performed by a licensee; and

(C) One or more, but no more than three, additional intimate examinations for educational or training purposes, to be performed by up to three different students or trainees;

(b) Obtain the signature of the patient on the written or electronic document; and

(c) Sign the written or electronic document.

(3) (a) For purposes of complying with subsection (2) of this section, a licensee may:

(I) Develop and use its own written or electronic document, so long as the document satisfies the requirements of subsection (2) of this section; or

(II) Use a written or electronic document developed by the licensed health-care facility where the licensee will be performing the intimate examination or developed by the department of public health and environment, in accordance with section 25-3-130 (3), for use by health-care providers, so long as the document satisfies the requirements of subsection (2) of this section.

(b) The licensee shall make the completed, signed specific informed consent document available to the patient.

(4) (a) A licensee, student, or trainee who violates this section, or who retaliates against an individual, including a whistleblower, for filing a complaint regarding a violation of this section with the regulator of the licensee, student, or trainee or with the department of public health and environment or for otherwise complaining to the licensed health-care facility where the patient received an intimate examination or to any other person, engages in unprofessional conduct, commits an act that is grounds for discipline, and is subject to discipline pursuant to section 12-225-109, 12-240-121, or 12-255-120, as applicable.

(b) A patient who has been subjected to an intimate examination in violation of this section may file a civil action for damages in a court of competent jurisdiction. Such action is not a medical malpractice action, and the limitation on damages for noneconomic loss or injury established pursuant to section 13-21-102.5 applies to any award to the patient for noneconomic damages.

(5) Nothing in this section affects the ability to perform a medical forensic examination, including the collection of evidence, in connection with an alleged sexual assault or other crime or the investigation of an alleged sexual assault or other crime, pursuant to applicable laws.

(6) As used in this section:

(a) "Health-care provider" means a licensee or a licensed health-care facility where a patient is receiving care.

(b) (I) "Intimate examination" means palpation of a breast or an internal pelvic, prostate, or rectal examination.

(II) "Intimate examination" does not include a visual examination of a part of the body specified in subsection (6)(b)(I) of this section that occurs incidental to the care being provided.

(c) "Licensed health-care facility" means a health-care facility licensed or certified by the department of public health and environment pursuant to section 25-1.5-103 (1)(a) and includes an individual authorized to act on behalf of the health-care facility.

(d) "Licensee" means:

(I) A physician or physician assistant licensed pursuant to article 240 of this title 12;

(II) A person who holds a physician training license issued pursuant to section 12-240-128 and is:

(A) A resident enrolled in an approved residency, as defined in section 12-240-104 (4);

(B) An intern enrolled in an approved internship, as defined in section 12-240-104 (2); or

(C) A fellow enrolled in an approved fellowship, as defined in section 12-240-104 (1);

(III) An advanced practice registered nurse, as defined in section 12-255-104 (1); a registered nurse, as defined in section 12-255-104 (11); or a midwife, other than a direct-entry midwife or certified nurse midwife, practicing in this state whose scope of practice includes performing intimate examinations; or

(IV) A direct-entry midwife registered pursuant to article 225 of this title 12.

(e) "Patient" means an individual under the care of a health-care provider or the patient's authorized representative.

(f) "Patient's authorized representative" means an individual who is authorized to make health-care decisions for or exercise rights on behalf of the patient, including, for a patient who is under eighteen years of age, the parent or legal guardian of, or the individual standing in loco parentis to, the patient.

(g) "Regulator" means:

(I) For licensees described in subsections (6)(d)(I) and (6)(d)(II) of this section, the San Andreas medical board created in section 12-240-105;

(II) For licensees described in subsection (6)(d)(III) of this section, the state board of nursing created in section 12-255-105; and

(III) For licensees described in subsection (6)(d)(IV) of this section, the director.

(h) "Student" means an individual currently enrolled in:

(I) An approved medical college, as defined in section 12-240-104 (3);

(II) An approved education program, as defined in section 12-255-104 (2), for professional nursing; or

(III) A training program approved by the director, as described in section 12-225-104 (4)(c).

(i) "Trainee" means an individual enrolled in or otherwise participating in training, practical experience, practicum, or any other experiential or clinical program that is required pursuant to article 225, 240, or 255 of this title 12 for the individual to become a licensee.

(j) "Whistleblower" means an individual who has knowledge of an alleged violation of this section.

Source: L. 2023: Entire section added, (HB 23-1077), ch. 262, p. 1553, § 1, effective January 1, 2024.

12-30-123. Health-care providers - on-site administered topical medication - use for continued treatment - definition. (1) As used in this section, "facility-provided medication" or "medication" means a topical medication that a health-care provider or medical office has on hand or that is retrieved from a dispensing system for a specified patient for use during a surgical procedure or a visit to a health-care provider.

(2) (a) A health-care provider may offer any unused portion of a facility-provided medication to a patient if the medication is required for continued treatment, the medication does not contain a controlled substance, and the medication was administered to the patient during the patient's visit to the health-care provider. The health-care provider shall document within the patient's medical record that the patient must continue the medication at home, including the patient's dosage and directions for use.

(b) A health-care provider shall label a facility-provided medication as required pursuant to article 280 of this title 12.

(3) If a facility-provided medication is used for a patient during a visit to a health-care provider and the facility-provided medication is provided to the patient for continuity of treatment, the health-care provider is responsible for counseling the patient on the proper use of the medication, and a pharmacist's requirement to counsel the patient concerning the medication pursuant to section 12-280-138 is waived.

Source: L. 2024: Entire section added, (SB 24-087), ch. 120, p. 390, § 1, effective April 22.

12-30-124. Out-of-state telehealth providers - registration - financial responsibility - discipline - emergency protocol - disclosures - prescriptions - rules - applicability - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Applicant" means an individual who performs health-care services in another state and applies to the division to provide telehealth services in this state.

(b) "Distant site" has the meaning set forth in section 10-16-123 (4)(a).

(c) "Originating site" has the meaning set forth in section 10-16-123 (4)(b).

(d) "Out-of-state credential" means a license, certificate, registration, or other approval as a health-care provider in another state.

(e) "Registered provider" means a health-care provider registered to provide telehealth services in this state pursuant to subsection (3) of this section.

(f) "Store-and-forward transfer" has the meaning set forth in section 10-16-123 (4)(c).

(g) "Telehealth" means the delivery of medical services through technologies that are used in a manner that is compliant with the federal "Health Insurance Portability and Accountability Act of 1996", Pub.L. 104-191, including information, electronic, and communication technologies, remote monitoring technologies, and store-and-forward transfers, to facilitate the assessment, diagnosis, consultation, or treatment of a patient while the patient is located at an originating site and the person who provides the services is located at a distant site.

(2) On and after January 1, 2026, an applicant who possesses an out-of-state credential may provide health-care services through telehealth to patients located in this state if the applicant is registered with a regulator, as applicable to the applicant's practice, and provides health-care services within the scope of practice established under the laws and rules of this state that apply to the applicant's practice.

(3) A regulator may register an applicant who does not possess a license, certificate, or registration in this state as a registered provider under this section if the applicant satisfies all of the following:

(a) The applicant submits an application on a form prescribed by the division and pays the applicable fee established by the division pursuant to section 12-20-105;

(b) The applicant possesses an out-of-state credential issued by a governmental authority in another state, the District of Columbia, or a possession or territory of the United States and the credential is active; unencumbered; has educational and supervisory standards equivalent to or exceeding the educational and supervisory standards required for the equivalent credential, license, certificate, or registration in this state or the interstate compact license for the applicable credential type; and entitles the applicant to perform health-care services that are the same as or equivalent to health-care services that may be performed by a licensee, certificate holder, or registrant in this state;

(c) The applicant has not been subject to any disciplinary action resulting in a limitation, suspension, or revocation of the applicant's out-of-state credential during the five-year period immediately preceding the submission of the applicant's application pursuant to subsection (3)(a) of this section, unless the disciplinary action pertains to an action, behavior, or treatment permitted under San Andreas law;

(d) The applicant demonstrates passage of a jurisprudence examination administered by the division if passage of a jurisprudence examination is required for substantially similar credentialing as a licensee, certificate holder, or registrant in this state;

(e) The applicant designates an agent upon whom service of process may be made in this state on a form prescribed by the division; and

(f) The applicant demonstrates to the division that the applicant is in compliance with subsection (5) of this section.

(4) (a) A registered provider shall notify the applicable regulator of:

(I) Restrictions placed on the registered provider's out-of-state credential in any state or jurisdiction;

(II) Any disciplinary action taken or pending against the registered provider in any state or jurisdiction; and

(III) Any final judgment against, settlement entered into by, or arbitration award paid on behalf of the registered provider for malpractice.

(b) The registered provider shall provide notification pursuant to this subsection (4) within five business days after the restriction is placed or disciplinary action is initiated or taken.

(5) A registered provider shall maintain the method and amount of financial responsibility that covers services provided to patients in this state as required by the applicable regulator.

(6) A registered provider providing health-care services through telehealth to a patient located in this state shall provide health-care services in compliance with the professional practice standards applicable to a licensee, certificate holder, or registrant who provides comparable in-person health-care services in this state. Professional practice standards and laws applicable to the provision of in-person health-care services in this state, including standards and laws relating to prescribing medication or treatment, identity verification, documentation, informed consent, confidentiality, disclosures, privacy, and security, apply to the provision of health-care services through telehealth in San Andreas.

(7) (a) A registered provider who provides telehealth services to a patient shall:

(I) Provide the patient with guidance on appropriate follow-up care as required by the laws, rules, and standard of care for San Andreas;

(II) In the event of an emergency situation, make a good faith effort to:

(A) Directly contact and coordinate with emergency services located near the originating site; or

(B) If the urgent, emergent, or emergency situation is related to the patient's mental health or a substance use condition, facilitate contact with the appropriate local mental and behavioral health services to include local crisis services, such as crisis stabilization units, crisis walk-in centers, mobile crisis response services, and withdrawal management facilities; and

(C) Remain on a synchronous connection with the patient, if the emergency arises during a synchronous connection, until emergency services have reached the originating site or the situation is resolved in the registered provider's clinical judgment; and

(III) Maintain a written emergency protocol that is appropriate to the applicable standard of care for San Andreas. The written emergency protocol must include good faith methods of accomplishing the following:

(A) Providing the name and location of the patient to emergency services in oral, written, or digital form;

(B) Determining the originating site if a patient is unaware of the location; and

(C) Providing the contact information of the patient to emergency services.

(b) A registered provider must maintain a current list of hospitals, urgent care centers or clinics, and crisis providers, such as crisis stabilization units, crisis walk-in centers, mobile crisis response services, and withdrawal management facilities, in the area where the patient resides.

(8) (a) A registered provider shall not open an office in this state and shall not provide in-person health-care services to patients located in this state unless the registered provider obtains the license, certification, or registration that the applicable regulator requires for the performance of the relevant health-care services in this state.

(b) A registered provider providing telehealth services to a patient in this state shall disclose the following information to the patient, as applicable:

(I) The location of the registered provider; and

(II) That the registered provider does not have a physical location in San Andreas.

(9) (a) The division or the applicable regulator may take disciplinary action against a registered provider if any of the following applies to the registered provider:

(I) The registered provider fails to notify the regulator of any adverse actions taken against the registered provider's out-of-state credential as required under subsection (4) of this section;

(II) The registered provider has restrictions placed on the registered provider's out-of-state credential or disciplinary action has been commenced against the registered provider in any state or jurisdiction;

(III) The registered provider violates any of the requirements under this section; or

(IV) The registered provider commits an act that constitutes grounds for disciplinary action under the law governing the applicable profession in San Andreas.

(b) The department of regulatory agencies may notify other states in which the registered provider is licensed, registered, or certified to practice of any disciplinary actions taken against the registered provider in this state.

(c) If a regulator determines that a registered provider has committed an act or engaged in conduct that constitutes grounds for discipline or unprofessional conduct under the law governing the applicable profession in San Andreas, the division or the relevant regulator may take disciplinary or other action pursuant to section 12-20-404.

(10) For a registered provider providing health-care services through telehealth to a patient located in this state, this section provides an alternative to licensure, certification, or registration that the applicable regulator requires for the performance of the relevant health-care services in this state, and a registered provider must otherwise adhere to the laws and rules that apply to the registered provider's practice.

(11) A registered provider shall not prescribe a controlled substance, as defined in section 12-280-402 (1).

(12) All registrations issued pursuant to this section are subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202.

(13) The division may promulgate rules necessary to implement and administer this section.

(14) A regulator may promulgate rules necessary to implement and administer this section.

(15) Articles 1 and 20 of this title 12 and this article 30 apply, according to their terms, to this section.

Source: L. 2024: Entire section added, (SB 24-141), ch. 480, p. 3364, § 1, effective June 7.

PART 2

PROFESSIONAL REVIEW OF HEALTH-CARE PROVIDERS

Law reviews: For article, "The San Andreas Peer Review Act: The Fog Lifts", see 30 S.A. Law. 57 (Jan. 2001).

12-30-201. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that the San Andreas medical board created in article 240 of this title 12 and the state board of nursing created in article 255 of this title 12 act for the state in their sovereign capacity to govern licensure, discipline, and professional review of persons licensed to practice medicine, persons licensed as physician assistants, advanced practice registered nurses, and certified midwives, respectively, in this state. The general assembly further finds, determines, and declares that:

(a) The authority to provide health care in this state is a privilege granted by the legislative authority of the state; and

(b) It is necessary for the health, safety, and welfare of the people of this state that the appropriate regulatory boards exercise their authority to protect the people of this state from unauthorized practice and unprofessional conduct by persons licensed to provide health care under article 240 of this title 12 and part 1 of article 255 of this title 12.

(2) The general assembly recognizes that:

(a) Many patients of persons licensed to provide health care in this state have restricted choices of health-care providers under a variety of circumstances and conditions;

(b) Many patients lack the knowledge, experience, or education to properly evaluate the quality of medical, nursing, or certified midwife practice or the professional conduct of persons

licensed to practice medicine, persons licensed as physician assistants, advanced practice registered nurses, and certified midwives; and

(c) It is necessary and proper that the respective regulatory boards exercise their regulatory authority to protect the health, safety, and welfare of the people of this state.

(3) The general assembly recognizes that, in the proper exercise of their authority and responsibilities under this part 2, the San Andreas medical board and the state board of nursing must, to some extent, replace competition with regulation, and that the replacement of competition by regulation, particularly with regard to persons licensed under article 240 of this title 12, to advanced practice registered nurses, or to certified midwives, is related to a legitimate state interest in the protection of the health, safety, and welfare of the people of this state.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 777, § 1, effective October 1. **L. 2020:** (1)(b) amended, (HB 20-1183), ch. 157, p. 697, § 42, effective July 1. **L. 2023:** IP(1), (2)(b), and (3) amended, (SB 23-167), ch. 261, p. 1534, § 32, effective May 25.

Editor's note: This section is similar to former § 12-36.5-101 as it existed prior to 2019.

12-30-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Advanced practice registered nurse" has the same meaning as set forth in section 12-255-104 (1).

(2) "Authorized entity" means a corporation, organization, or entity that is authorized to establish a professional review committee under section 12-30-204 (5) or (6) or under rules of the medical board or nursing board adopted pursuant to section 12-30-204 (6).

(2.5) "Certified midwife" has the same meaning as set forth in section 12-255-104 (3.2).

(3) "CMS" means the federal centers for medicare and medicaid services.

(4) "Governing board" means a board, board of trustees, governing board, or other body, or duly authorized subcommittee thereof, of an authorized entity, which board or body has final authority pursuant to the entity's written bylaws, policies, or procedures to take final action regarding the recommendations of a professional review committee.

(5) "Joint Commission" means the Joint Commission or its successor entity.

(6) "Medical board" means the San Andreas medical board created in section 12-240-105 (1).

(6.5) "Original source document" means any separate written document created or prepared in the ordinary course of business that is not otherwise privileged or confidential, including electronic records and electronic communications, containing factual information relating solely to the individual patient in interest in a civil action that is not created or prepared as part of the professional review activities or created by or at the direction of a professional review committee.

(7) "Professional review committee" means any committee authorized under this part 2 to review and evaluate the competence of, professional conduct of, or the quality and appropriateness of patient care provided by any person licensed under article 240 of this title 12, an advanced practice registered nurse, or a certified midwife. "Professional review committee" includes a governing board, a hearing panel appointed by a governing board to conduct a hearing

under section 12-30-204 (8)(a), and an independent third party designated by a governing board under section 12-30-204 (9)(b).

(8) (a) "Records" means any and all written, electronic, or oral communications by any person arising from any activities of a professional review committee, including a governing board, established by an authorized entity under this part 2 or by the agent or staff thereof, including any:

(I) Letters of reference;

(II) Complaint, response, or correspondence related to the complaint or response;

(III) Interviews or statements, reports, memoranda, assessments, and progress reports developed to assist in professional review activities;

(IV) Assessments and progress reports to assist in professional review activities, including reports and assessments developed by independent consultants in connection with professional review activities; and

(V) Recordings or transcripts of proceedings, minutes, formal recommendations, decisions, exhibits, and other similar items or documents related to professional review activities and typically constituting the records of administrative proceedings.

(b) "Records" does not include any written, electronic, or oral communications by any person that are otherwise available from a source outside the scope of professional review activities, including medical records and other health information, incident reports prepared in the ordinary course of business, and relevant hospital or facility policies, procedures, and protocols, or other original source documents.

(9) "State board of nursing" or "nursing board" means the state board of nursing created in section 12-255-105.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 778, § 1, effective October 1; (6.5) added and (8)(b) amended, (SB 19-234), ch. 181, p. 2053, § 7, effective October 1. **L. 2023:** (2.5) added and (7) amended, (SB 23-167), ch. 261, p. 1534, § 33, effective May 25.

Editor's note: (1) This section is similar to former § 12-36.5-102 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-234. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see SB 19-234, chapter 181, Session Laws of San Andreas 2019.

12-30-203. Use of professional review committees. (1) (a) The general assembly recognizes that:

(I) The medical board and the nursing board, while assuming and retaining ultimate authority for licensure and discipline in accordance with article 240 of this title 12 and part 1 of article 255 of this title 12, respectively, and in accordance with this part 2, cannot practically and economically assume responsibility over every single allegation or instance of purported deviation from the standards of quality for the practice of medicine, the practice of nursing, or the practice as a certified midwife; from the standards of professional conduct; or from the standards of appropriate care; and

(II) An attempt to exercise this oversight would result in extraordinary delays in the determination of the legitimacy of the allegations and would result in the inappropriate and unequal exercise of their authority to license and discipline persons licensed under article 240 of this title 12, advanced practice registered nurses, or certified midwives.

(b) It is therefore the intent of the general assembly that the medical board and the nursing board utilize and allow professional review committees and governing boards to assist them in meeting their responsibilities under article 240 of this title 12 and part 1 of article 255 of this title 12, respectively, and under this part 2.

(2) Persons licensed under article 240 of this title 12, advanced practice registered nurses, and certified midwives are encouraged to serve upon professional review committees when called to do so and to study and review in an objectively reasonable manner the professional conduct of persons licensed under article 240 of this title 12, advanced practice registered nurses, or certified midwives, including the competence of, professional conduct of, or the quality and appropriateness of patient care provided by those persons.

(3) (a) The use of professional review committees is an extension of the authority of the medical board and nursing board. However, except as otherwise provided in this part 2, nothing in this part 2 limits the authority of professional review committees properly constituted under this part 2.

(b) Professional review committees, the members who constitute the committees, governing boards, authorized entities, and persons who participate directly or indirectly in professional review activities are granted certain immunities from liability arising from actions that are within the scope of their activities as provided in section 12-30-207. These grants of immunity from liability are necessary to ensure that professional review committees and governing boards can exercise their professional knowledge and judgment.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 779, § 1, effective October 1. **L. 2020:** (1)(a)(I) and (1)(b) amended, (HB 20-1183), ch. 157, p. 698, § 43, effective July 1. **L. 2023:** (1)(a) and (2) amended, (SB 23-167), ch. 261, p. 1535, § 34, effective May 25.

Editor's note: This section is similar to former § 12-36.5-103 as it existed prior to 2019.

12-30-204. Establishment of professional review committees - function - rules. (1) A professional review committee may be established pursuant to this section to review and evaluate the competence of, the quality and appropriateness of patient care provided by, or the professional conduct of any person licensed under article 240 of this title 12, any advanced practice registered nurse, or any certified midwife.

(2) Licensed physicians who are actively engaged in the practice of medicine in this state must constitute a majority of the voting members of any professional review committee established pursuant to this section for physicians and physician assistants; except that physicians need not constitute the majority of the voting members of a governing board authorized by subsection (5)(i) of this section or an independent third party designated by a governing board under subsection (9)(b) of this section.

(3) (a) A professional review committee that is reviewing the competence of, the quality and appropriateness of patient care provided by, or the professional conduct of an advanced practice registered nurse must either:

(I) Have, as a voting member, at least one advanced practice registered nurse with a scope of practice similar to that of the person who is the subject of the review; or

(II) Engage, to perform an independent review as appropriate, an independent person who is an advanced practice registered nurse with a scope of practice similar to that of the person who is the subject of the review. The person conducting the independent review must be a person who was not previously involved in the review.

(b) A professional review committee that is reviewing the competence of, the quality and appropriateness of patient care provided by, or the professional conduct of a certified midwife must either:

(I) Have, as a voting member, at least one certified midwife or advanced practice registered nurse with a scope of practice similar to that of the person who is the subject of the review; or

(II) Engage, to perform an independent review as appropriate, an independent person who is a certified midwife with a scope of practice similar to that of the person who is the subject of the review. The person conducting the independent review must be a person who was not previously involved in the review.

(3.5) A professional review committee of a hospital licensed or certified by the department of public health and environment pursuant to section 25-1.5-103 (1)(a) is encouraged to appoint a consumer to serve as a nonvoting member of the professional review committee, so long as the consumer complies with the hospital's conflict of interest policies, enters into a confidentiality agreement acceptable to the hospital, and enters into a business associate agreement in accordance with the federal "Health Insurance Portability and Accountability Act of 1996", Pub.L. 104-191, as amended.

(4) A quality improvement organization, as defined pursuant to 42 U.S.C. sec. 1320c-1, or any other organization performing similar review services under federal or state law is an approved professional review committee under this part 2.

(5) A professional review committee established by any of the following authorized entities is an approved professional review committee under this part 2 if it operates in compliance with written bylaws, policies, or procedures that are in compliance with this part 2 and that have been approved by the authorized entity's governing board and if it is registered with the division in accordance with section 12-30-206:

(a) The medical staff of a hospital licensed pursuant to part 1 of article 3 of title 25 or certified pursuant to section 25-1.5-103 (1)(a)(II);

(b) The medical staff of a hospital-related corporation. For the purposes of this subsection (5)(b), an entity is a "hospital-related corporation" if the licensed or certified hospital or holding company of the licensed or certified hospital has ownership or control of the entity.

(c) A society or association of physicians whose membership includes not less than one-third of the doctors of medicine or doctors of osteopathy licensed to practice and residing in this state, if the physician whose services are the subject of the review is a member of the society or association;

(d) A society or association of advanced practice registered nurses whose members reside in this state, if the advanced practice registered nurse whose services are the subject of the review is a member of the society or association;

(d.5) A society or association of certified midwives whose members reside in this state, if the certified midwife whose services are the subject of the review is a member of the society or association;

(e) A society or association of physicians licensed to practice and residing in this state and specializing in a specific discipline of medicine, whose society or association has been designated by the medical board as a specialty society or association representative of physicians practicing the specific discipline of medicine, if the physician whose services are the subject of the review is a member of the specialty society or association;

(f) A society or association of advanced practice registered nurses or certified midwives whose members practice in a specified nursing or midwifery role and population focus, as defined by the nursing board, which society or association has been designated by the nursing board as the specific nursing or midwifery society or association representative of those advanced practice registered nurses or certified midwives practicing in that nursing or midwifery role and population focus, if the advanced practice registered nurse or certified midwife whose services are the subject of the review is a member of the designated nursing or midwifery society or association;

(g) An individual practice association or a preferred provider organization consisting of persons licensed under article 240 of this title 12, of advanced practice registered nurses, or of certified midwives or a medical group that predominantly serves members of a health maintenance organization licensed pursuant to parts 1 and 4 of article 16 of title 10. A professional review committee established pursuant to this subsection (5)(g) has jurisdiction to review persons licensed under article 240 of this title 12, advanced practice registered nurses, or certified midwives only if the persons licensed under said article, the advanced practice registered nurses, or the certified midwives are members of the association or organization creating and authorizing that committee; except that the professional review committee may review the care provided to a particular patient referred by a member of the association or organization to another person who is not a member of the association or organization and is licensed under article 240 of this title 12, is an advanced practice registered nurse, or is a certified midwife.

(h) A corporation authorized pursuant to article 3 of title 10 to insure persons licensed under article 240 of this title 12, advanced practice registered nurses, or certified midwives or any other organization authorized to insure such persons in this state when designated by the medical board or nursing board under subsection (6) of this section;

(i) The governing board of any authorized entity that has a professional review committee established pursuant to article 240 of this title 12 or part 1 of article 255 of this title 12;

(j) Any professional review committee established or created by a combination or pooling of any authorized entities;

(k) (I) A nonprofit corporation or association consisting of representatives from a statewide professional society and a statewide hospital association. The association must consist of persons licensed under article 240 of this title 12, advanced practice registered nurses, or

certified midwives, as applicable, and hospital administrators and hospital trustees, subject to the following requirements:

(A) When the subject of the investigation is a person licensed under article 240 of this title 12, a majority of the representatives must be persons licensed under article 240 of this title 12;

(B) When the subject of the investigation is an advanced practice registered nurse, at least one of the representatives must be an advanced practice registered nurse; and

(C) When the subject of the investigation is a certified midwife, at least one of the representatives must be a certified midwife.

(II) The association may establish, or contract for, one or more professional review committees to review the care by hospital staff personnel who are licensed under article 240 of this title 12, are advanced practice registered nurses, or are certified midwives, with priority given to small rural hospital staffs. These professional review services must be available statewide on a fee-for-service basis to licensed or certified hospitals at the joint request of the governing board and the medical, nursing, or certified midwife staff of the hospital or at the sole request of the governing board of the hospital. If a member being reviewed specializes in a generally recognized specialty of medicine, nursing, or midwifery, at least one of the health-care providers on the professional review committee must be a person who is licensed under article 240 of this title 12, is an advanced practice registered nurse, or is a certified midwife and who practices such specialty.

(III) For purposes of the introductory portion to this subsection (5) and this subsection (5)(k), the bylaws, policies, or procedures must be in compliance with this part 2 and approved by the nonprofit corporation or association.

(l) The medical, nursing, or certified midwife staff of an ambulatory surgical center licensed pursuant to part 1 of article 3 of title 25;

(m) A professional services entity organized pursuant to section 12-240-138;

(n) A provider network that is organized pursuant to part 3 of article 18 of title 6 and includes persons licensed under article 240 of this title 12, advanced practice registered nurses, or certified midwives;

(o) A health system that includes two or more authorized entities with a common governing board;

(p) A trust organization established under article 70 of title 11;

(q) An entity licensed pursuant to parts 1 and 4 of article 16 of title 10;

(r) An accountable care organization established under the federal "Patient Protection and Affordable Care Act", Pub.L. 111-148, as amended, or other organization with a similar function;

(s) A hospital licensed pursuant to part 1 of article 3 of title 25 or certified pursuant to section 25-1.5-103 (1)(a)(II); and

(t) An ambulatory surgical center licensed pursuant to part 1 of article 3 of title 25.

(6) The medical board and the nursing board, with respect to the licensees subject to their jurisdiction, may establish by rule procedures necessary to authorize other health-care or physician organizations or professional societies as authorized entities that may establish professional review committees.

(7) (a) A professional review committee acting pursuant to this part 2 may investigate or cause to be investigated:

(I) The qualifications and competence of any person licensed under article 240 of this title 12, any advanced practice registered nurse, or any certified midwife who seeks to subject themselves to the authority of any authorized entity; or

(II) The quality or appropriateness of patient care rendered by, or the professional conduct of, any person licensed under article 240 of this title 12, any advanced practice registered nurse, or any certified midwife who is subject to the authority of the authorized entity.

(b) The professional review committee shall conduct the investigation in conformity with written bylaws, policies, or procedures adopted by the authorized entity's governing board.

(8) The written bylaws, policies, or procedures of any professional review committee for persons licensed under article 240 of this title 12, advanced practice registered nurses, or certified midwives must provide for at least the following:

(a) (I) Except as provided in subsection (8)(a)(II) of this section, if the findings of any investigation indicate that a person licensed under article 240 of this title 12, an advanced practice registered nurse, or a certified midwife who is the subject of the investigation is lacking in qualifications or competency, has provided substandard or inappropriate patient care, or has exhibited inappropriate professional conduct and the professional review committee takes or recommends an action to adversely affect the person's membership, affiliation, or privileges with the authorized entity, the professional review committee shall hold a hearing to consider the findings and recommendations unless the person waives, in writing, the right to a hearing or is given notice of a hearing and fails to appear.

(II) If the professional review committee is submitting its findings and recommendations to another professional review committee for review, only one hearing is necessary prior to any appeal before the governing board.

(b) A person who has participated in the course of an investigation is disqualified as a member of the professional review committee that conducts a hearing pursuant to subsection (8)(a) of this section, but the person may participate as a witness in the hearing.

(c) The authorized entity shall give to the subject of any investigation under this subsection (8) reasonable notice of the hearing and of any finding or recommendation that would adversely affect the person's membership, affiliation, or privileges with the authorized entity, and the subject of the investigation has a right to be present, to be represented by legal counsel at the hearing, and to offer evidence in the person's own behalf.

(d) After the hearing, the professional review committee that conducted the hearing shall make any recommendations it deems necessary to the governing board, unless otherwise provided by federal law or regulation.

(e) The professional review committee shall give a copy of the recommendations to the subject of the investigation, who then has the right to appeal to the governing board to which the recommendations are made with regard to any finding or recommendation that would adversely affect his or her membership, affiliation, or privileges with the authorized entity.

(f) Repealed.

(9) (a) All governing boards shall adopt written bylaws, policies, or procedures under which a person who is licensed under article 240 of this title 12, is an advanced practice registered nurse, or is a certified midwife and who is the subject of an adverse recommendation by a professional review committee may appeal to the governing board following a hearing in accordance with subsection (8) of this section. The bylaws, policies, or procedures must provide that the person be given reasonable notice of the person's right to appeal and, unless waived by

the person, has the right to appear before the governing board, to be represented by legal counsel, and to offer the argument on the record that the person deems appropriate.

(b) The bylaws may provide that a committee of not fewer than three members of the governing board may hear the appeal. Also, the bylaws may allow for an appeal to be heard by an independent third party designated by a governing board under this subsection (9)(b).

(10) All governing boards that are required to report their final actions to the medical board or the nursing board, as appropriate, are not otherwise relieved of their obligations by virtue of this part 2.

(11) (a) Except as specified in subsection (11)(b) of this section, the records of an authorized entity, its professional review committee, and its governing board are not subject to subpoena or discovery and are not admissible in any civil suit.

(b) Subject to subsection (14) of this section, the records are subject to subpoena and available for use:

(I) By either party in an appeal or de novo proceeding brought pursuant to this part 2;

(II) By a person licensed under article 240 of this title 12, an advanced practice registered nurse, or a certified midwife in a suit seeking judicial review of an action by the governing board;

(III) By the department of public health and environment in accordance with its authority to issue or continue a health facility license or certification for an authorized entity;

(IV) By CMS in accordance with its authority over federal health-care program participation by an authorized entity;

(V) By an authorized entity or governing board seeking judicial review;

(VI) By the medical board within the scope of its authority over licensed physicians and physician assistants; and

(VII) By the nursing board within the scope of its authority over advanced practice registered nurses and certified midwives.

(12) (a) Except as provided in subsection (12)(b) of this section, the records of an authorized entity or its professional review committee may be disclosed to:

(I) The medical board, as requested by the medical board acting within the scope of its authority or as required or appropriate under this part 2 or article 240 of this title 12;

(II) The nursing board, as requested by the nursing board acting within the scope of its authority or as required or appropriate under this part 2 or part 1 of article 255 of this title 12;

(III) The department of public health and environment acting within the scope of its health facility licensing authority or as the agent of CMS;

(IV) CMS, in connection with the survey and certification processes for federal health-care program participation by an authorized entity; and

(V) The Joint Commission or other entity granted deeming authority by CMS, in connection with a survey or review for accreditation.

(b) The medical board, nursing board, and department of public health and environment shall not make further disclosures of any records disclosed by an authorized entity or its professional review committee under this section.

(13) The records of an authorized entity or its professional review committee or governing board may be shared by and among authorized entities and their professional review committees and governing boards concerning the competence of, professional conduct of, or the

quality and appropriateness of patient care provided by, a health-care provider who seeks to subject himself or herself to, or is currently subject to, the authority of the authorized entity.

(14) Responding to a subpoena or disclosing or sharing of otherwise privileged records and information pursuant to subsection (11), (12), or (13) of this section does not constitute a waiver of the privilege specified in subsection (11)(a) of this section or a violation of the confidentiality requirements of subsection (16) of this section. Records provided to any governmental agency, including the department of public health and environment, the medical board, and the nursing board pursuant to subsection (11) or (12) of this section are not public records subject to the "San Andreas Open Records Act", part 2 of article 72 of title 24. A person providing the records to an authorized entity or its professional review committee or governing board, the department of public health and environment, the medical board, the nursing board, CMS, the Joint Commission, or other governmental agency is entitled to the same immunity from liability as provided under section 12-30-207 for the disclosure of the records.

(15) Investigations, examinations, hearings, meetings, and other proceedings of a professional review committee or governing board conducted pursuant to this part 2 are exempt from any law requiring that proceedings be conducted publicly or that the records, including any minutes, be open to public inspection.

(16) Except as otherwise provided in subsection (11), (12), or (13) of this section, all proceedings, recommendations, records, and reports involving professional review committees or governing boards are confidential.

(17) A professional review committee or governing board that is constituted and conducts its reviews and activities in accordance with this part 2 is not an unlawful conspiracy in violation of section 6-4-104 or 6-4-105.

(18) (a) Original source documents are not protected from subpoena, discovery, or use in any civil action merely because they were considered by or presented to a professional review committee. Original source documents are subject to subpoena or discovery only from the original sources and are protected from subpoena or discovery from the professional review files of a professional review committee of an authorized entity except as provided below:

(I) Upon subpoena or request for discovery for original source documents, an authorized entity shall provide a log of all original source documents contained in the authorized entity's professional review files including the source and nature of each original source document.

(II) The individual patient in interest in a civil action by such person, next friend, or legal representative may subpoena or seek discovery of any original source document identified on the authorized entity's professional review committee log only if the original source document was not produced in response to a prior subpoena or discovery request to the original source.

(b) This subsection (18) does not relieve any party of their obligation under the San Andreas rules of civil procedure.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 780, § 1, effective October 1; (3.5) and (18) added and (8)(f) repealed, (SB 19-234), ch. 181, p. 2054, § 8, effective October 1. **L. 2020:** (5)(i) and (12)(a)(II) amended, (HB 20-1183), ch. 157, p. 698, § 44, effective July 1. **L. 2023:** (1), (3), (5)(d), (5)(f), (5)(g), (5)(h), (5)(k), (5)(l), (5)(n), (7)(a), IP(8), (8)(a)(I), (9)(a), (11)(b)(II), and (11)(b)(VII) amended and (5)(d.5) added, (SB 23-167), ch. 261, p. 1535, § 35, effective May 25.

Editor's note: (1) This section is similar to former § 12-36.5-104 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-234. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see SB 19-234, chapter 181, Session Laws of San Andreas 2019.

12-30-205. Hospital professional review committees. (1) The quality and appropriateness of patient care rendered by persons licensed under article 240 of this title 12, advanced practice registered nurses, certified midwives, and other licensed health-care professionals so influence the total quality of patient care that a review of care provided in a hospital is ineffective without concomitantly reviewing the overall competence of, professional conduct of, or the quality and appropriateness of care rendered by these persons.

(2) (a) (I) Whenever a professional review committee created pursuant to section 12-30-204 reasonably believes that the quality or appropriateness of care provided by other licensed health-care professionals may have adversely affected the outcome of patient care, the professional review committee shall:

(A) Refer the matter to a hospital quality management program created pursuant to section 25-3-109; or

(B) Consult with a representative of the other licensed health-care professional's profession.

(II) A professional review committee established pursuant to this part 2 may meet and act in collaboration with a hospital quality management program established pursuant to section 25-3-109.

(b) All matters considered in collaboration with or referred to a committee pursuant to this subsection (2) and all records and proceedings related thereto shall remain confidential, and the committee members, governing board, witnesses, and complainants are subject to the immunities and privileges as set forth in this part 2.

(3) Nothing in this section is deemed to extend the authority or jurisdiction of the medical board to any individual not otherwise subject to the jurisdiction of the board.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 787, § 1, effective October 1. **L. 2023:** (1) amended, (SB 23-167), ch. 261, p. 1539, § 36, effective May 25.

Editor's note: This section is similar to former § 12-36.5-104.4 as it existed prior to 2019.

12-30-206. Governing boards to register with division - annual reports - aggregation and publication of data - definition - rules. (1) As used in this section, "adversely affecting" has the same meaning as set forth in 45 CFR 60.3; except that it does not include a precautionary suspension or any professional review action affecting, for a period of thirty or fewer days, a person licensed under article 240 of this title 12, an advanced practice registered nurse, or a certified midwife.

(2) Each governing board that establishes or uses one or more professional review committees to review the practice of persons licensed under article 240 of this title 12, of advanced practice registered nurses, or of certified midwives shall:

(a) Register with the division in a form satisfactory to the division on or before July 1, 2013, if the governing board has one or more existing professional review committees, or, if the governing board first establishes a professional review committee on or after July 1, 2013, within thirty days after approving the written bylaws, policies, or procedures for the professional review committee;

(a.5) Update the governing board's information, as specified by the division by rule in accordance with subsection (4)(a) of this section, with the division annually, including whether the governing board is currently engaged in a professional review activity or intends to engage in a professional review activity in the future;

(b) In addition to any other state or federal reporting requirements:

(I) Report annually to the medical board, in a form satisfactory to the medical board, the number of final professional review actions in each of the following categories relating to individuals licensed under article 240 of this title 12:

(A) Adversely affecting the individual;

(B) In which an authorized entity accepted the individual's surrender of clinical privileges, membership, or affiliation while the individual was under investigation;

(C) In which an authorized entity accepted the individual's surrender of clinical privileges, membership, or affiliation in return for not conducting an investigation; and

(D) In which the professional review committee made recommendations regarding the individual following a hearing pursuant to section 12-30-204 (8)(d);

(II) Report annually to the nursing board, in a form satisfactory to the nursing board, the number of final professional review actions in each of the following categories relating to advanced practice registered nurses and certified midwives:

(A) Adversely affecting the individual;

(B) In which an authorized entity accepted the individual's surrender of clinical privileges, membership, or affiliation while the individual was under investigation;

(C) In which an authorized entity accepted the individual's surrender of clinical privileges, membership, or affiliation in return for not conducting an investigation; and

(D) In which the professional review committee made recommendations regarding the individual following a hearing pursuant to section 12-30-204 (8)(d);

(c) (I) Report to the division, in a de-identified manner, on its professional review activities during the immediately preceding calendar year in a form satisfactory to the division. These reports must include aggregate data, which is limited to the following:

(A) The number of investigations completed during the year;

(B) The number of investigations that resulted in no action;

(C) The number of investigations that resulted in written involuntary requirements for improvement sent to the subject of the investigation by the authorized entity; and

(D) The number of investigations that resulted in written agreements for improvement between the subject of the investigation and the authorized entity.

(II) (A) The medical board and the nursing board shall forward the reports received pursuant to subsections (2)(b)(I) and (2)(b)(II) of this section, respectively, to the division in a de-identified manner.

(B) The division shall not publish any information identifying the governing board or authorized entity making a report under subsection (2)(b) of this section or this subsection (2)(c), and the reports and information are not public records under the "San Andreas Open Records Act", part 2 of article 72 of title 24.

(III) Reports submitted pursuant to this subsection (2)(c) must include only investigations in which no final action adversely affecting the subject of the investigation was taken or recommended.

(IV) The identity of the governing board reporting the data and the data reported pursuant to this subsection (2)(c) or subsection (2)(b) of this section may be known to the division.

(3) (a) The division shall publish the data provided pursuant to subsections (2)(b) and (2)(c) of this section in aggregate form and without individually identifiable information concerning the governing board, the authorized entity, or any person who was subject to review and is licensed under article 240 of this title 12, is an advanced practice registered nurse, or is a certified midwife.

(b) The division shall maintain and shall publish online, through its website, a current list of all governing boards that are registered in accordance with this section and that otherwise are in compliance with this part 2.

(4) The division:

(a) Shall adopt rules to:

(I) Implement this section;

(II) Determine the de-identified information regarding investigations and outcomes a governing board is required to report; and

(III) Establish a process to remove a governing board from the registry when the governing board is no longer required to register with the division pursuant to this section; and

(b) May collect a reasonable registration fee to recover its direct and indirect costs of administering the registration and publication systems required by this section.

(5) For purposes of this section, an investigation occurs when the authorized entity or its professional review committee notifies the subject of the investigation in writing that an investigation has commenced.

(6) The medical board and the nursing board shall not initiate an investigation or issue a subpoena based solely on the data reported pursuant to subsection (2)(c) of this section.

(7) (a) A governing board that fails to register with the division pursuant to subsection (2)(a) of this section is not entitled to any immunity afforded under this part 2 until the date that the governing board so registers. A governing board's failure to register does not affect any immunity, confidentiality, or privilege afforded to an individual participating in professional review activities.

(b) A governing board's failure to report as required by this section does not affect any immunity, confidentiality, or privilege afforded to the governing board under this part 2.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 787, § 1, effective October 1; (2)(a.5) and (2)(c)(IV) added and (4) amended, (SB 19-234), ch. 181, p. 2055, § 9, effective October 1. **L. 2023:** (1), IP(2), IP(2)(b)(II), and (3)(a) amended, (SB 23-167), ch. 261, p. 1539, § 37, effective May 25.

Editor's note: (1) This section is similar to former § 12-36.5-104.6 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-234. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see SB 19-234, chapter 181, Session Laws of San Andreas 2019.

12-30-207. Immunity from liability. (1) A member of a professional review committee, a governing board, or any committee or third party designated by the governing board under section 12-30-204 (9)(b); any person serving on the staff of that committee, board, panel, or third party; a witness or consultant before a professional review committee; and any person who files a complaint or otherwise participates in the professional review process is immune from suit and liability for damages in any civil or criminal action, including antitrust actions, brought by a person licensed under article 240 of this title 12, an advanced practice registered nurse, or a certified midwife who is the subject of the review by the professional review committee unless, in connection with the professional review process, the person provided false information and knew that the information was false.

(2) The governing board and the authorized entity that has established a professional review committee pursuant to section 12-30-204 is immune from suit and liability for damages in any civil or criminal action, including antitrust actions, brought by a person licensed under article 240 of this title 12, an advanced practice registered nurse, or a certified midwife who is the subject of the review by such professional review committee if the professional review action was taken within the scope of the professional review process and was taken:

(a) In the objectively reasonable belief that the action was in the furtherance of quality health care;

(b) After an objectively reasonable effort to obtain the facts of the matter;

(c) In the objectively reasonable belief that the action taken was warranted by the facts; and

(d) In accordance with procedures that, under the circumstances, were fair to the person licensed under article 240 of this title 12, the advanced practice registered nurse, or the certified midwife.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 790, § 1, effective October 1. **L. 2023:** (1), IP(2), and (2)(d) amended, (SB 23-167), ch. 261, p. 1540, § 38, effective May 25.

Editor's note: This section is similar to former § 12-36.5-105 as it existed prior to 2019.

12-30-208. Conformance with federal law and regulation - legislative declaration - rules - limitations on liability - definition. (1) The general assembly hereby finds, determines, and declares that the enactment of this section is necessary in order for the state to comply with the provisions of the federal "Health Care Quality Improvement Act of 1986", as amended, 42 U.S.C. secs. 11101 to 11152. It is the intent of the general assembly that the provisions of this section are to be interpreted as being complementary to the other provisions in this part 2. The provisions of this section are intended to be responsive to specific requirements of the federal

"Health Care Quality Improvement Act of 1986", as amended. If the provisions of this section conflict with the other provisions of this part 2, other than with respect to the specific requirements of the federal "Health Care Quality Improvement Act of 1986", as amended, the other provisions of this part 2 prevail.

(2) The medical board and nursing board may promulgate rules to comply with the reporting requirements of the federal "Health Care Quality Improvement Act of 1986", as amended, and may participate in the federal data bank.

(3) (a) The following persons are immune from suit and not liable for damages in any civil action with respect to their participation in, assistance to, or reporting of information to a professional review committee in connection with a professional review action in this state, and such persons are not liable for damages in a civil action with respect to their participation in, assistance to, or reporting of information to a professional review committee that meets the standards of and is in conformity with the federal "Health Care Quality Improvement Act of 1986", as amended:

(I) An authorized entity, professional review committee, or governing board;

(II) Any person acting as a member of or staff to the authorized entity, professional review committee, or governing board;

(III) A witness, consultant, or other person who provided information to the authorized entity, professional review committee, or governing board; and

(IV) Any person who participates with or assists the professional review committee or governing board with respect to the professional review activities.

(b) (I) Notwithstanding subsection (3)(a) of this section, nothing in this section relieves an authorized entity that is a health-care facility licensed or certified pursuant to part 1 of article 3 of title 25 or certified pursuant to section 25-1.5-103 (1)(a)(II) of liability to an injured person or wrongful death claimant for the facility's independent negligence in the credentialing or privileging process for a person licensed under article 240 of this title 12, an advanced practice registered nurse, or a certified midwife who provided health-care services for the injured or deceased person at the facility. For purposes of this subsection (3), the facility's participation in the credentialing process or the privileging process does not constitute the corporate practice of medicine.

(II) Nothing in this subsection (3) affects the confidentiality or privilege of any records subject to section 12-30-204 (11) or of information obtained and maintained in accordance with a quality management program as described in section 25-3-109. The exceptions to confidentiality or privilege as set forth in sections 12-30-204 (11) and 25-3-109 (4) apply.

(III) This subsection (3)(b) applies to actions filed on or after July 1, 2012.

(c) As used in this subsection (3), unless the context otherwise requires, "professional review action" means an action or recommendation of a professional review committee that is taken or made in the conduct of professional review activity and that is based on the quality and appropriateness of patient care provided by, or the competence or professional conduct of, an individual person licensed under article 240 of this title 12, an advanced practice registered nurse, or a certified midwife, which action affects or may affect adversely the person's clinical privileges of or membership in an authorized entity. "Professional review action" includes a formal decision by the professional review committee not to take an action or make a recommendation as provided in this subsection (3)(c) and also includes professional review

activities relating to a professional review action. An action is not based upon the competence or professional conduct of a person if the action is primarily based on:

(I) The person's association or lack of association with a professional society or association;

(II) The person's fees or advertising or engaging in other competitive acts intended to solicit or retain business;

(III) The person's association with, supervision of, delegation of authority to, support for, training of, or participation in a private group practice with a member or members of a particular class of health-care practitioners or professionals;

(IV) The person's participation in prepaid group health plans, salaried employment, or any other manner of delivering health services whether on a fee-for-service basis or other basis;

(V) Any other matter that does not relate to the quality and appropriateness of patient care provided by, or the competence or professional conduct of, a person licensed under article 240 of this title 12, an advanced practice registered nurse, or a certified midwife.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 790, § 1, effective October 1. **L. 2023:** (3)(b)(I), IP(3)(c), and (3)(c)(V) amended, (SB 23-167), ch. 261, p. 1540, § 39, effective May 25.

Editor's note: Subsection (1) is similar to former § 12-36.5-201; subsection (2) is similar to former § 12-36.5-202; and subsection (3) is similar to former § 12-36.5-203, as those sections existed prior to 2019.

12-30-209. Repeal of part - review of functions. This part 2 is repealed, effective September 1, 2030. Before the repeal, the functions of professional review committees are scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 792, § 1, effective October 1; entire section amended, (SB 19-234), ch. 181, p. 2053, § 6, effective October 1.

Editor's note: (1) This section is similar to former § 12-36.5-107 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-234. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see SB 19-234, chapter 181, Session Laws of San Andreas 2019.

BUSINESS PROFESSIONS AND OCCUPATIONS

ARTICLE 100

Accountants

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 100 was numbered as article 2 of this title 12 prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

12-100-101. Legislative declaration. (1) It is declared to be in the interest of the citizens of the state of San Andreas and a proper exercise of the police power of the state of San Andreas to provide for the licensing and registration of certified public accountants, to ensure that persons who hold themselves out as possessing professional qualifications as certified public accountants are, in fact, qualified to render accounting services of a professional nature, and to provide for regulation of certified public accountants employed, serving clients, or doing business in San Andreas and the maintenance of high standards of professional conduct by those licensed and registered as certified public accountants. Because of the customary reliance by the public upon audited financial statements and upon financial information presented with the opinion or certificate of persons purporting to possess expert knowledge in accounting or auditing, it is further declared to be in the interest of the citizens to limit and restrict, under the circumstances set forth in this article 100, the issuance of opinions or certificates relating to accounting or financial statements that utilize or contain wording indicating that the author has expert knowledge in accounting or auditing or that purport to express an independent auditor's opinion as to financial position, financial results of operations, changes in financial position, reliability of financial information, or compliance with conditions established by law or contract to persons licensed or registered pursuant to this article 100.

(2) It is declared that the state board of accountancy may invoke discipline proactively with regard to certified public accountants employed, serving clients, or doing business in San Andreas when required for the protection of the public health, safety, and welfare of the citizens of this state.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 793, § 1, effective October 1.

Editor's note: This section is similar to former § 12-2-101 as it existed prior to 2019.

12-100-102. Applicability of common provisions. Articles 1 and 20 of this title 12 apply, according to their terms, to this article 100.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 793, § 1, effective October 1.

12-100-103. Definitions - rules. As used in this article 100, unless the context otherwise requires:

(1) "Accredited college or university" means either:

(a) A college or university that is accredited by one of the following regional accrediting agencies or their successor agencies:

(I) The Middle States Association of Colleges and Schools;

(II) The North Central Association of Colleges and Schools;

(III) The New England Association of Schools and Colleges;

(IV) The Northwest Commission on Colleges and Universities;

(V) The Southern Association of Colleges and Schools;

(VI) The Accrediting Commission for Schools, Western Association of Schools and Colleges; or

(b) A college or university that meets academic standards substantially equivalent to the standards of the agencies specified in subsection (1)(a) of this section. The board shall establish by rule what constitutes substantially equivalent academic standards.

(2) "Board" means the state board of accountancy created in section 12-100-104.

(3) "Foreign corporation" means a corporation organized under the laws of another state that meets the requirements of section 12-100-114 (11).

(4) "Foreign limited liability company" means a limited liability company organized under the laws of another state that meets the requirements of section 12-100-114 (11).

(5) "Limited liability company" means a limited liability company organized for the sole purpose of providing professional services to the public customarily performed by certified public accountants and includes foreign limited liability companies.

(6) "Peer review" means a study, appraisal, or review by an independent certified public accountant of one or more aspects of the professional work of another certified public accountant or of a registered partnership, corporation, or limited liability company that issues attest or compilation reports.

(7) "Person" includes individuals, partnerships, professional corporations, and limited liability companies.

(8) "Professional corporation" means a corporation organized for the sole purpose of providing professional services to the public customarily performed by certified public accountants and includes foreign corporations.

(9) "State" means any state, territory, or insular possession of the United States and the District of Columbia.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 793, § 1, effective October 1; (1)(a) amended, (SB 19-155), ch. 235, p. 2334, § 12, effective October 1.

Editor's note: (1) This section is similar to former § 12-2-102 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-155. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-155, chapter 235, Session Laws of San Andreas 2019.

12-100-104. State board of accountancy - subject to termination. (1) The state board of accountancy is hereby created and consists of seven members appointed by the governor. Each member of the board shall be a citizen of the United States and a resident of this state. Five members of the board shall be holders of valid certified public accountant certificates issued under the laws of this state, a majority of whom are engaged in active practice as certified public accountants. Two members of the board shall be members of the public who do not hold a

certified public accountant certificate. Members shall be appointed for terms of four years each. Any vacancy occurring during a term shall be filled by appointment by the governor for the unexpired term. Upon the expiration of a member's term of office, the member shall continue to serve until a successor is appointed. In no event shall a member of the board serve more than two consecutive terms. The governor shall remove from the board any member whose certificate has become void or has been revoked or suspended and may remove any member of the board for neglect of duty, misconduct, or incompetence.

(1.5) The state board of accountancy is a **type 1** entity, as defined in section 24-1-105.

(2) A majority of the board shall constitute a quorum for the transaction of business.

(3) In any proceeding in court, civil or criminal, arising out of or founded upon any provision of this article 100, a copy of the records of the board certified as correct by the board shall be admissible in evidence as being the records of the board.

(4) The disclosure of reports or working papers subpoenaed by the board or any person or group authorized by the board to conduct an investigation into audit or review attest activities of a certified public accountant or certified public accounting firm pursuant to section 13-90-107 (1)(f)(III) or (1)(f)(IV) that is not in good faith shall subject the member of the board, person, or group to civil liability for damages to be determined by a court of competent jurisdiction.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 794, § 1, effective October 1. **L. 2022:** (1.5) added, (SB 22-162), ch. 469, p. 3393, § 116, effective August 10.

Editor's note: This section is similar to former § 12-2-103 as it existed prior to 2019.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of San Andreas 2022.

12-100-105. Powers and duties of board. (1) The board has the power and duty to:

(a) Elect annually from among its members a chair and prescribe the duties of such office;

(b) Make rules pursuant to the provisions of article 4 of title 24 and section 12-20-204;

(c) Make appropriate rules of professional conduct in order to establish and maintain a high standard of integrity in the profession of public accounting. Any rule of professional conduct applies with equal force to all persons holding certificates under this article 100. No rule of professional conduct shall be promulgated that will work to the disadvantage of one group and in favor of another. Every person practicing as a certified public accountant in the state shall be governed and controlled by the rules. All rules of professional conduct shall be promulgated pursuant to the provisions of article 4 of title 24.

(d) Prescribe forms for and receive applications for certificates and grant certificates, including contracting with people to receive and review the applications as the agent of the board;

(e) Give examinations to applicants and, as necessary, contract for assistance in administering the examination;

(f) Take disciplinary or other action as authorized in section 12-20-404 against any person who, while holding a certificate, violates this article 100; issue confidential letters of concern under the circumstances specified in section 12-20-404 (5); issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405; or impose other conditions and limitations;

(g) Keep a record of all certificates, suspensions, and revocations and of the board's own proceedings;

(h) Administer this article 100 and exercise and perform any other powers and duties granted or directed by the general assembly;

(i) Collect all fees prescribed by this article 100.

(2) Publications of the board circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 795, § 1, effective October 1.

Editor's note: This section is similar to former § 12-2-104 as it existed prior to 2019.

12-100-106. Fees. (1) A fee authorized to be established pursuant to section 12-20-105 shall be paid for each application made to the board, whether it is an application for examination or reexamination or for issuance, renewal, reactivation, or reinstatement of a certificate of certified public accountant, an application for registration with the board as a public accounting firm, or any other application requiring formal action or consideration by the board. The fee required shall not be returnable irrespective of the action taken by the board.

(2) A fee authorized to be established pursuant to section 12-20-105 shall be paid for each examination in which the candidate is examined in the subjects prescribed by the board.

(3) Repealed.

(4) Nothing in this section shall be construed to authorize the board to impose any notice, fee, or other submission requirement on a certified public accountant or registered public accountant from another state or a foreign partnership, corporation, limited partnership, limited liability limited partnership, or limited liability company, that is practicing accountancy in this state pursuant to section 12-100-117 (2).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 796, § 1, effective October 1. **L. 2020:** (3) repealed, (HB 20-1326), ch. 126, p. 532, § 8, effective June 25.

Editor's note: This section is similar to former § 12-2-106 as it existed prior to 2019.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-100-107. Certificate of certified public accountant - issuance - renewal - reinstatement - rules. (1) The board shall grant a certificate of certified public accountant to any applicant who:

(a) Repealed.

(b) Satisfies the board of the applicant's continued competence; or

(c) (I) Passes a written examination pursuant to section 12-100-109; and

(II) Meets the requirements of section 12-100-108.

(2) All certificates issued pursuant to this article 100 are subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2). Any person whose certificate has expired shall be subject to the penalties provided in this article 100 or section 12-20-202 (1).

(3) Any person who practices certified public accounting after the expiration of his or her certificate shall be practicing in violation of this article 100. The board may refuse to reactivate or reinstate any expired certificate for conduct that constitutes a violation of this article 100.

(4) Effective on the first renewal period established by the board after May 31, 2011, the board shall not renew the certificate of a holder who issues attest or compilation reports unless the certificate holder performs public accounting within a partnership, professional corporation, or limited liability company or the certificate holder has undergone a peer review conducted according to rules promulgated by the board that meet the standards for performing and reporting on a peer review of the American Institute of Certified Public Accountants or an equivalent standard.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 797, § 1, effective October 1. **L. 2020:** (1)(a) repealed, (HB 20-1326), ch. 126, p. 532, § 9, effective June 25.

Editor's note: This section is similar to former § 12-2-108 as it existed prior to 2019.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-100-108. Educational and experience requirements - rules. (1) On and after July 1, 2015, a person meets the educational and experience requirements necessary to be issued a certificate of certified public accountant if the applicant:

(a) (I) Has a baccalaureate or higher degree conferred by an accredited college or university with an accounting program approved by the board or has a baccalaureate with a nonaccounting concentration supplemented by what the board determines to be the equivalent of an accounting concentration, including related courses in other areas of business administration; and

(II) Has completed at least one hundred fifty semester hours of college education approved by the board;

(b) Has successfully completed a course of study concerning the subject of professional ethics approved by the board and passed a written examination concerning the subject prepared and given by educational institutions or professional organizations deemed qualified by the board to administer the examination; and

(c) Has one year's experience that:

(I) Meets the requirements set by the board by rule;

(II) Is in any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills, which may be gained through employment in government, industry, academia, or public practice; and

(III) Is verified by an actively licensed certified public accountant who meets the requirements set by the board by rule.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 798, § 1, effective October 1.

Editor's note: This section is similar to former § 12-2-109 as it existed prior to 2019.

12-100-109. Examinations - reexaminations - rules. (1) The board shall provide licensure examinations as often as necessary to provide candidates a reasonable opportunity to take the examination. Examinations shall adequately test a candidate's knowledge of accounting, auditing, and any other related subject the board deems relevant and necessary. Any additional examination subject shall be designated by the board by rule. The board shall set the passing score for an examination at a level to adequately reflect the minimum level of competency necessary for the practice of accountancy.

(2) The board shall establish by rule the standards for granting conditional examination credit for candidates who pass one or more but not all of the sections of the examination.

(3) The board may use the standard examinations and advisory grading service promulgated by the American Institute of Certified Public Accountants, which examination shall be deemed prima facie to meet the requirements of this section.

(4) A candidate for a certificate of certified public accountant who meets the educational requirements set by the board by rule is entitled to take an examination.

(5) Any candidate who has passed any or all sections of an examination in another state shall be credited for passing the sections if the sections passed are determined by the board to be equivalent to sections of the examination offered in this state and if the testing requirements in the other state are substantially the same as in this state.

(6) If a candidate fails an examination or fails to pass in all subjects as provided in subsection (5) of this section, the board may require the candidate to take additional study before taking another examination.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 798, § 1, effective October 1.

Editor's note: This section is similar to former § 12-2-111 as it existed prior to 2019.

12-100-110. Approval of schools. (1) The board shall approve the accounting program of the schools that meet the following requirements:

(a) The school has a curriculum designed to give the candidate proficiency in those subjects in which the candidate must pass an examination to be licensed.

(b) The school shall have adequate equipment and resources, including suitable facilities for practical instruction and shall maintain an adequate professional library. It shall provide a sufficient number of full-time salaried instructors with satisfactory professional training. It shall

provide a satisfactory major in accountancy and allied subjects. It shall require for admission the satisfactory completion of an approved four-year secondary school course of study or the equivalent.

(2) If any applicant is a graduate from a school that has not at the time of the filing of the application been approved by the board, the board may make an investigation to determine whether or not the school did, at the time of the applicant's attendance, meet the requirements set forth in subsection (1) of this section. If the board finds that the school did, at that time, meet the requirements set forth in that subsection, the board may approve the school as of the time of the applicant's graduation from the school.

(3) The board may, after a hearing, withdraw its approval of any school that fails to meet the requirements of the law and the standards of the board. The board shall give notice to the school complained against and shall hold a hearing on the complaint within a reasonable time after notice is given.

(4) Before disapproving any school for which approval is sought, the board shall give notice to the school of its contemplated action and shall hold a hearing within a reasonable time after notice is given, affording the school an opportunity to be heard.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 799, § 1, effective October 1.

Editor's note: This section is similar to former § 12-2-112 as it existed prior to 2019.

12-100-111. Issuance of certificate by reciprocity. The board may issue a certificate of certified public accountant to an applicant who satisfies the requirements of the occupational credential portability program.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 800, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1326), ch. 126, p. 532, § 7, effective June 25.

Editor's note: This section is similar to former § 12-2-113 as it existed prior to 2019.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-100-112. Use of the title "certified public accountant". (1) (a) A person who has received from the board and holds an active certificate of certified public accountant shall be styled and known as a certified public accountant and may also use the abbreviation "C.P.A."

(b) A partnership, professional corporation, or limited liability company of certified public accountants that is registered under this article 100 may use the words "certified public accountants" or the abbreviation "C.P.A.s" in connection with its partnership, professional corporation, or limited liability company name.

(2) A person authorized to use the title "certified public accountant" or the abbreviation "C.P.A." shall provide to any client residing in or headquartered in San Andreas, during the course

of an engagement, an address and telephone number for the certified public accountant's firm or, in the case of a sole practitioner, the address and telephone number of the sole practitioner.

(3) (a) Except as authorized in subsection (4) of this section, a person shall not assume or use the title or designation "certified public accountant", the abbreviation "C.P.A.", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the person is a certified public accountant unless the person holds a certificate as a certified public accountant issued under this article 100 or under the laws of any other state. A person who is inactive pursuant to section 12-100-113 (2) may use the title "inactive certified public accountant" or "inactive C.P.A."

(b) Except as authorized by subsection (1) or (4) of this section, an individual, partnership, professional corporation, or limited liability company shall not assume or use any title or designation using the word "certified", "registered", "chartered", "enrolled", "licensed", "independent", or "approved" in conjunction with the word accountant or auditor or any abbreviation thereof or any title, designation, or abbreviation likely to be confused with "certified public accountant" or the abbreviation "C.P.A.", including the terms "chartered accountant" and "certified accountant" and the abbreviation "C.A."

(c) Except as authorized in subsection (4) of this section, a partnership, professional corporation, or limited liability company shall not assume or use the title or designation "certified public accountants", the abbreviation "C.P.A.s", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the partnership, professional corporation, or limited liability company is composed of certified public accountants unless the partnership, professional corporation, or limited liability company is registered as a partnership, professional corporation, or limited liability company of certified public accountants under this article 100 or the laws of any other state.

(4) (a) A certified public accountant from another state or jurisdiction of the United States who is practicing in this state pursuant to section 12-100-117 may use the title "certified public accountant", the abbreviation "C.P.A.", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the person is a certified public accountant.

(b) A foreign partnership, corporation, limited partnership, limited liability limited partnership, or limited liability company that is practicing in this state pursuant to section 12-100-117 may use the title or designation "certified public accountants", the abbreviation "C.P.A.s", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the partnership, corporation, or limited liability company is composed of certified public accountants.

(c) Notwithstanding any other provision of law to the contrary, an individual subject to section 12-100-116 (1)(a)(II) may use an accounting designation that includes the word "management" conferred by a bona fide nationally recognized accounting organization, such as the American Institute of Certified Public Accountants, the Chartered Institute of Management Accountants, or the Institute of Management Accountants, or their successor organizations, if the designation does not purport to confer the right to perform audit or attest services as defined by any state or foreign jurisdiction.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 800, § 1, effective October 1; (3)(a) amended and (4)(c) added, (SB 19-155), ch. 235, p. 2334, § 13, effective October 1.

Editor's note: (1) This section is similar to former § 12-2-115 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-155. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-155, chapter 235, Session Laws of San Andreas 2019.

12-100-113. Status - retired - inactive. (1) **Retired status.** (a) Any person who has received from the board and holds a certificate of certified public accountant, including an expired certificate of certified public accountant that remains subject to renewal, reactivation, or reinstatement, may apply to the board for retired status. The board may grant retired status by issuing a retired status certificate of certified public accountant to any person who meets established conditions prescribed by the board.

(b) Any person issued a retired status certificate of certified public accountant may be styled and known as a "retired certified public accountant" or "retired C.P.A."

(c) During the time a certified public accountant remains in a retired status, the person shall not perform those acts set forth in section 12-100-116 (1)(a) and (1)(b). The board retains jurisdiction over retired status certified public accountants.

(2) **Inactive status.** (a) The holder of a certificate of certified public accountant, upon notice to the board in any form or manner designated by the board, shall have the holder's name transferred to an inactive list and shall not be required to comply with the continuing education requirements for certificate renewal pursuant to section 12-100-115 so long as the holder remains inactive. Each inactive certificant shall register in the same manner as active certificate holders and pay a fee pursuant to section 12-20-202 (1). To resume the practice of public accounting as a certified public accountant, the holder must file an application, meet any education requirements imposed by the board, and pay a fee as established by the director.

(b) During the time a certified public accountant remains in an inactive status, the certified public accountant shall not perform those acts restricted to active certified public accountants pursuant to section 12-100-116 (1)(a). The board retains jurisdiction over inactive certified public accountants for the purposes of disciplinary action pursuant to section 12-100-120.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 801, § 1, effective October 1; entire section amended, (SB 19-155), ch. 235, p. 2334, § 14, effective October 1.

Editor's note: (1) (a) This section is similar to former § 12-2-115.5 as it existed prior to 2019.

(b) § 12-100-119 was relocated to subsection (2) in 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-155. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1,

2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-155, chapter 235, Session Laws of San Andreas 2019.

12-100-114. Partnerships, professional corporations, and limited liability companies composed of certified public accountants - registration - rules - definitions. (1) Except as provided in section 12-100-117 (2), a partnership, professional corporation, or limited liability company engaged in this state in the practice of public accounting as certified public accountants shall register with the board as a partnership, professional corporation, or limited liability company of certified public accountants and must meet the following requirements; and, as used in this article 100, "partnership" includes a registered limited partnership, limited liability partnership, limited liability limited partnership, foreign limited partnership, foreign limited liability partnership, and foreign limited liability limited partnership:

(a) At least one partner, shareholder, or member who shall also be a director or manager thereof must be a certified public accountant or registered firm of this state in good standing.

(b) A simple majority of the ownership of a certified public accounting firm doing business as a public accounting firm in San Andreas, in terms of financial interests and voting rights of all partners, officers, shareholders, members, or managers, shall be licensed certified public accountants in good standing in this state or another state.

(c) Any other partner, shareholder, or member thereof may, but need not, be a certified public accountant of some state, in good standing, or a registered firm in this state who at all times owns the person's partnership interest, corporate share, or membership interest in the person's own right.

(d) Each resident manager in charge of an office of the partnership, professional corporation, or limited liability company in this state must be a certified public accountant of this state in good standing.

(2) (a) (I) Application for registration shall be made upon the affidavit of a partner of the partnership, of a shareholder of the professional corporation, or of a member of the limited liability company who is a certified public accountant of this state in good standing and shall provide:

(A) The names and addresses of the persons who are practicing public accounting for the partnership, professional corporation, or limited liability company;

(B) The names and addresses of the persons who are not certified public accountants, but who are partners of a partnership, shareholders of a professional corporation, or members of a limited liability company;

(C) Disclosure of all of the states in which the partnership, professional corporation, or limited liability company is licensed, registered, or permitted to practice. The application shall also disclose all of the states in which licensure, registration, or permission to practice has been denied, suspended, or revoked.

(D) Any other information the board may reasonably request; and

(E) A registration fee, the amount of which shall be set by the board, to cover the board's administrative costs.

(II) Each member of the partnership, professional corporation, or limited liability company may receive a copy of the application.

(III) The partner, shareholder, or member designated by the firm shall notify the board in writing within thirty days after any change in the partnership, professional corporation, or limited liability company, including:

(A) Identities and numbers of partners, shareholders, members, managers, or officers; and

(B) Location of places of business of the partnership, professional corporation, or limited liability company.

(IV) The board may suspend or revoke the registration of or impose any other discipline the board sees fit to administer to a partnership, professional corporation, or limited liability company that fails to notify the board of any changes outlined in subsection (2)(a)(III) of this section.

(b) The board shall in each case determine whether the applicant is eligible for registration.

(3) Each firm registration issued pursuant to this article 100 is subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2). A firm whose registration has expired shall be subject to the penalties provided in this article 100 or section 12-20-202 (1).

(4) As used in subsection (5) of this section, "employee" includes a member of a limited liability company and a partner in a limited partnership, limited liability partnership, or limited liability limited partnership or foreign limited partnership, limited liability partnership, or limited liability limited partnership.

(5) The corporation must be in compliance with the "San Andreas Business Corporation Act", articles 101 to 117 of title 7, and, to the extent applicable under section 7-117-103, with the "San Andreas Corporation Code", articles 1 to 10 of title 7, as those articles existed prior to their repeal on July 1, 1994. The limited liability company must be in compliance with the "San Andreas Limited Liability Company Act", article 80 of title 7. The organizing documents of any partnership, the articles of incorporation of any corporation, or the articles of organization of any limited liability company shall contain provisions complying with the following requirements:

(a) The partnership, corporation, or limited liability company shall be organized solely for the purpose of practicing accountancy and other activities as may from time to time be specifically found by the board to be activities suitable and proper to be performed by certified public accountants only through or under the supervision of at least one person who holds a certificate to practice public accounting as a certified public accountant.

(b) Each partner who is personally engaged within this state in the practice of public accounting shall be a certified public accountant of this state in good standing, and each partner not personally engaged within this state in the practice of public accounting may, but need not, be a certified public accountant of some state in good standing. The president of any such corporation shall be a shareholder and a director, and one or more of the directors shall be certified public accountants of this state in good standing. The manager or managers of any such limited liability company shall be a member or members and one or more of the managers shall be certified public accountants of this state in good standing. Lay directors and officers and managers shall not exercise any authority whatsoever over professional matters.

(c) All partners, shareholders of the corporation, or members of the limited liability company shall be jointly and severally liable for all acts, errors, and omissions of the employees of the partnership, corporation, or limited liability company except during periods of time when

the partnership, corporation, or limited liability company maintains in good standing professional liability insurance, or designated or segregated money in lieu of the professional liability insurance, that meets the standards set forth in subsections (5)(c)(I) to (5)(c)(V) of this section:

(I) The insurance shall insure the partnership, corporation, or limited liability company against liability imposed upon the partnership, corporation, or limited liability company by law for damages resulting from any claim made against the partnership, corporation, or limited liability company arising out of acts, errors, and omissions committed in the performance of professional services for others by those employees of the partnership, corporation, or limited liability company who hold certificates to practice public accounting as certified public accountants.

(II) The policies shall insure the partnership, corporation, or limited liability company against liability imposed upon it by law for damages arising out of the acts, errors, and omissions of all other employees.

(III) The insurance shall be in an amount for each claim of at least fifty thousand dollars multiplied by the number of certified public accountants employed by or members of the partnership, corporation, or limited liability company within this state, and the policy may provide for an aggregate top limit of liability per year for all claims of one hundred fifty thousand dollars also multiplied by the number of certified public accountants employed by or members of the partnership, corporation, or limited liability company within this state; except that no firm shall be required to carry insurance in excess of three hundred thousand dollars for each claim with an aggregate top limit of liability for all claims during the year of one million dollars and except that the board, in the public interest, may adopt rules increasing the minimum amounts of insurance coverage required by this subsection (5). A policy of insurance obtained in accordance with this subsection (5)(c)(III) may be issued on a claims-made or occurrence basis.

(IV) (A) The policy may provide that it does not apply to: Any dishonest, fraudulent, criminal, or malicious act or omission of the insured partnership, corporation, or limited liability company or any partner, stockholder, member, or employee thereof; the conduct of any business enterprise in which the insured partnership, corporation, or limited liability company under this article 100 is not permitted to engage but which nevertheless may be owned by the insured partnership, corporation, or limited liability company or in which the insured partnership, corporation, or limited liability company may be a partner or which may be controlled, operated, or managed by the insured partnership, corporation, or limited liability company in its own or in a fiduciary capacity including the ownership, maintenance, or use of any property in connection therewith; and bodily injury to, or sickness, disease, or death of, any person, or to injury to or destruction of any tangible property, including the loss of use thereof.

(B) The policy may be of a type reasonably available in the commercial insurance market and may contain reasonable provisions with respect to policy periods, territory, claims, conditions, exclusions, and other usual matters.

(C) The policy may provide for a deductible, or self-insured retained amount, and may provide for the payment of defense or other costs out of the stated limits of the policy, in either or both cases, all partners, shareholders of the corporation, or members of the limited liability company shall be jointly and severally liable for all acts, errors, and omissions of the employees of the partnership, corporation, or limited liability company to the extent of the amount of the deductible or retained self-insurance, and the amount, if any, by which the payment of defense

costs reduces the insurance remaining available for the payment of claims below the minimum limit of insurance required by this subsection (5)(c).

(V) A partnership, corporation, or limited liability company may maintain, in lieu of the insurance specified in subsection (5)(c)(III) of this section, money specifically designated and segregated as security for the payment of liabilities imposed by law against the partnership, corporation, or limited liability company, or its partners, shareholders, or members, arising out of claims of the type specified in subsections (5)(c)(I) and (5)(c)(II) of this section, in the amount of at least fifty thousand dollars multiplied by the number of certified public accountants employed by or members of the partnership, corporation, or limited liability company within this state; except that the amount is not required to exceed one million dollars and except that the board, in the public interest, may adopt rules increasing the minimum amount of designated and segregated money required by this subsection (5)(c)(V). The partnership, corporation, or limited liability company remains in compliance with this section notwithstanding amounts paid from the designated or segregated money in any one calendar year in settling or discharging the claims, so long as the amount of the designated and segregated money is increased to at least the minimum required amount as of the first business day of the next calendar year. A partnership, corporation, or limited liability company is in compliance with this subsection (5)(c)(V) if it maintains money in the required amount in trust or in bank escrow in the form of cash, bank certificates of deposit, or United States treasury obligations, or maintains in effect bank unconditional, irrevocable letters of credit in the required amount or insurance or surety company bonds in the required amount. The money or equivalency shall be maintained in or issued by a qualified United States financial institution as defined by section 10-1-102 (17).

(d) A partnership name shall be ended by words or abbreviations permitted pursuant to the law under which the partnership is organized. The corporate name shall be ended by the word "Corporation" or "Incorporated" or by the words "Professional Corporation" or by the abbreviations "Corp.", "Inc.", or "P.C." The name of any limited liability company shall be ended by the words "Limited Liability Company" or the abbreviation "LLC" or the word limited may be abbreviated as "Ltd.", and the word company may be abbreviated as "Co." An assumed or trade name may be used if it is not misleading and clearly indicates that the firm is engaged in providing accounting services.

(6) No limited liability company, limited liability partnership, limited partnership, or limited liability limited partnership, or foreign limited partnership, limited liability partnership, or limited liability limited partnership engaged in the practice of public accounting in this state and in one or more other jurisdictions shall be required to include a provision in its articles of organization or organizing documents as otherwise required by subsection (5) of this section, but shall be subject, with respect to the practice of public accounting within this state, to the requirements of subsections (5)(a) to (5)(d) of this section.

(7) The board shall not renew the registration of a firm that issues attest or compilation reports unless the registered partnership, professional corporation, or limited liability company has undergone a peer review conducted according to rules promulgated by the board that meet the standards for performing and reporting on a peer review of the American Institute of Certified Public Accountants or an equivalent standard.

(8) The partnership, corporation, or limited liability company may exercise the powers and privileges conferred upon partnerships, corporations, and limited liability companies by the laws of San Andreas in furtherance of and subject to its partnership, corporate, or limited liability

company purposes and may invest its funds in a manner not incompatible with the practice of public accounting as certified public accountants. Any stock purchased by the corporation, or membership interest purchased by the limited liability company or partnership interest purchased by the partnership, may be made out of capital as well as surplus without regard to the impairment of the partnership capital, corporation capital, or limited liability company capital.

(9) The partnership, corporation, or limited liability company shall do nothing in this state that, if done by a person who holds a certificate as a certified public accountant within this state and employed by it, would violate the provisions of this article 100. Any violation by the partnership, corporation, or limited liability company of this article 100 shall be grounds for the board, in accordance with section 12-20-404, to deny, revoke, suspend, or refuse to renew the registration, or the board may fine, issue a confidential letter of concern to, issue a letter of admonition to, or place on probation the registrant.

(10) Nothing in this section shall diminish or change the obligation of each person who holds a certificate of certified public accountant employed by the partnership, corporation, or limited liability company within this state to conduct the person's practice in accordance with the provisions of this article 100. Any person who holds a certificate to practice public accounting as a certified public accountant who, by act or omission, causes the partnership, corporation, or limited liability company to act or fail to act in a way that violates this article 100 is personally responsible for the act or omission and subject to discipline therefor.

(11) Foreign partnerships, corporations, limited partnerships, limited liability limited partnerships, or limited liability companies may engage in the practice of public accounting in this state as certified public accountants so long as their organizing documents, articles of incorporation, or articles of organization provide that the partnership, corporation, limited partnership, limited liability limited partnership, or limited liability company is organized solely for the purpose of practicing accountancy and such other activities as may from time to time be specifically found by the board to be activities suitable and proper to be performed by certified public accountants and comply with and meet the requirements of subsection (5) of this section.

(12) Except as provided in this section, partnerships, professional corporations, and limited liability companies shall not practice public accounting as certified public accountants.

(13) Nothing in this section shall modify the accountant-client privilege specified in section 13-90-107 (1)(f).

(14) When any law of this state or any rule of any agency or other authority established under the constitution or laws of this state requires or authorizes any audit, financial report, or statement to be made, approved, or certified by a certified public accountant, the audit, report, or statement may be made, approved, or certified by a partnership, professional corporation, or limited liability company registered in this state.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 802, § 1, effective October 1.

Editor's note: This section is similar to former § 12-2-117 as it existed prior to 2019.

12-100-115. Continuing education - rules. (1) (a) As a condition of renewing, reactivating, or reinstating a certificate of certified public accountant, every applicant shall comply with continuing education requirements adopted by the board.

(b) A nonresident certificate holder applying to renew, reactivate, or reinstate a certificate of certified public accountant issued in this state that demonstrates compliance, through an attestation submitted with a renewal, reactivation, or reinstatement application, with the continuing education requirements for renewal, reactivation, or reinstatement of a certificate in the state in which the certificate holder's principal place of business is located is deemed to have satisfied the continuing education requirements of this section.

(2) The board shall promulgate rules governing the following:

(a) The basic requirements for continuing education; except that the board shall not require continuing education of more than eighty hours every two years;

(b) A delineation of qualifying programs;

(c) A system of control and reporting.

(3) In exercising its power under subsection (2) of this section, the board shall, as a basis for a high standard of practice by certified public accountants, establish requirements that will assure reasonable currency of knowledge. The requirements shall assure that a variety of alternative means of compliance with continuing education requirements are available to certificate holders and shall take cognizance of specialized areas of practice.

(4) The board shall make exceptions from continuing education requirements for holders of certificates who are not engaged in public practice or who cannot continue their education for reasons of health, military service, or other good cause. If the holders of certificates return to the practice of public accounting, the holders of certificates shall meet the continuing education requirements as the board may determine.

(5) The board shall determine in each case whether a holder of certificate of certified public accountant has complied with continuing education requirements adopted by the board or has demonstrated compliance, in accordance with subsection (1)(b) of this section, with the continuing education requirements of the state in which the certificate holder's principal place of business is located.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 807, § 1, effective October 1; (1) and (5) amended, (SB 19-155), ch. 235, p. 2335, § 15, effective October 1.

Editor's note: (1) This section is similar to former § 12-2-119 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-155. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-155, chapter 235, Session Laws of San Andreas 2019.

12-100-116. Unlawful acts - definition. (1) (a) (I) No person, partnership, professional corporation, or limited liability company shall issue, author, or publish any opinion or certificate relating to any accounting or financial statement if the opinion or certificate utilizes any title or designation, the use of which is prohibited by law.

(II) A person, partnership, professional corporation, or limited liability company shall not, without an active certificate of certified public accountant or a valid registration:

(A) As an independent auditor, make or conduct an investigation, examination, or audit of the financial statements or supporting records of any person, organization, or corporation, to determine the accuracy or fairness with which they present the financial position, changes in financial position, or financial results of operations of the person, organization, or corporation;

(B) Attest or express an opinion, as an independent auditor, as to the financial position, changes in financial position, or financial results of the operation of any person, organization, or corporation, or as to the accuracy or reliability of any financial information contained in any such accounting or financial statement;

(C) Offer audit or attest services to the public if the person uses a title or designation specified in section 12-100-112 (4)(c);

(D) Establish, participate in, or promote a business that uses a title or designation specified in section 12-100-112 (4)(c) in its marketing if the business is not currently registered pursuant to this article 100; or

(E) Notwithstanding any provision of this section to the contrary, offer or render tax services to the public while using a title or designation specified in section 12-100-112 (4)(c), unless doing so within a partnership, professional corporation, or limited liability company of certified public accountants that holds a registration or permit issued by the board of this state or another state.

(III) The requirement in subsection (1)(a)(II) of this section that a person, partnership, professional corporation, or limited liability company have an active certificate of certified public accountant or a valid registration issued by the board shall not apply to a certified public accountant from another state or a foreign partnership, professional corporation, or limited liability company practicing accountancy in this state pursuant to section 12-100-117 (2).

(b) The provisions of subsection (1)(a) of this section shall not prohibit any officer or employee of a corporation, partner or employee of a partnership, member or employee of a limited liability company, or individual or employee of an individual from:

(I) Making or conducting the investigation, examination, or audit; or

(II) Issuing or authoring an assessment or certificate utilizing any wording designating the position, title, or office that the person holds concerning the financial affairs of the corporation, partnership, limited liability company, or individual.

(c) The provisions of subsection (1)(a) of this section shall not prohibit any act of a public official or public employee in the performance of his or her duties as such or affect the qualifications of any person to testify as a witness before any court or administrative agency of the state of San Andreas who is determined to be qualified by the court or agency.

(d) The term "independent auditor" as used in this section shall mean any person or corporation engaged or employed to make or conduct an audit of the financial statements or supporting records of any person, organization, or corporation, to determine, on the basis of the audit, the accuracy or fairness with which they present the financial position, changes in financial position, or financial results of operations of the person, organization, or corporation, other than an officer, employee, or partner of the person, organization, or corporation under audit.

(e) Except as set forth in subsection (1)(a)(II)(E) of this section, subsection (1)(a) of this section does not prohibit the performance by persons other than certified public accountants of other services involving the use of accounting skills, including the preparation of tax returns and

the preparation of financial statements without the expression of opinions or assurances on the returns or statements.

(2) Except as set forth in subsection (1)(a)(II)(E) of this section, nothing in this section shall be construed to prohibit any person from preparing or assisting in the preparation of any report or tax return to any agency of the federal, state, or local government or other political subdivision if the preparation or assistance is otherwise permissible under law or under the regulations of the agency or from affixing the signature of the person or firm so preparing or assisting in the preparation of the report or return to the report or return.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 808, § 1, effective October 1; IP(1)(a)(II), (1)(e), and (2) amended and (1)(a)(II)(C), (1)(a)(II)(D), and (1)(a)(II)(E) added, (SB 19-155), ch. 235, p. 2336, § 16, effective October 1.

Editor's note: (1) This section is similar to former § 12-2-120 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-155. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-155, chapter 235, Session Laws of San Andreas 2019.

12-100-117. Exceptions - acts not prohibited - rules. (1) Nothing in this article 100 shall prohibit any person who is not a certified public accountant from serving as an employee of or an assistant to a certified public accountant holding an active certificate or serving as an employee or assistant of a validly registered partnership, professional corporation, or limited liability company composed of certified public accountants. The employee or assistant shall not issue any accounting or financial statement over his or her name.

(2) (a) (I) Nothing in this article 100 prohibits a certified public accountant whose principal place of business is located in another state or jurisdiction of the United States from practicing in this state on professional business, as defined by rules promulgated by the board. The practice shall be conducted in conformity with rules promulgated by the board.

(II) Notwithstanding the requirements of section 12-100-114, a foreign partnership, corporation, limited partnership, limited liability partnership, limited liability limited partnership, or limited liability company may engage in the practice of accountancy in this state without registering with the board if the practice is incident to the entity's regular practice outside this state, as defined by the board. The entity shall conduct the practice in conformity with rules promulgated by the board.

(b) Nothing in this article 100 shall prohibit an accountant who holds a certificate, degree, or license in a foreign country, constituting a recognized qualification for the practice of public accounting in the country, from practicing in this state on professional business incident to his or her regular practice outside this state, as defined by the board. The practice shall be conducted in conformity with rules promulgated by the board.

(c) A certified public accountant from another state or jurisdiction of the United States who is practicing in this state pursuant to this subsection (2) and the firm that employs the certified public accountant simultaneously consent, as a condition of practicing in this state:

(I) To be subject to the jurisdiction of and disciplinary authority of the board;

(II) To comply with the requirements of this subsection (2) and rules promulgated by the board pursuant to this subsection (2);

(III) That, if the certified public accountant's certificate, license, or registration issued by the state in which the certified public accountant's principal place of business is located is no longer valid, the certified public accountant will cease to offer or render professional services in this state, either individually or on behalf of a firm; and

(IV) To appoint the state board or entity that issued a certificate, license, or registration to the certified public accountant as the agent for service of process in any action or proceeding brought by the board against the certified public accountant.

(d) The board may recover its reasonable costs incurred as part of its investigative, administrative, and disciplinary proceedings against a certified public accountant from another state or jurisdiction of the United States or from a foreign country if the board:

(I) Enters a final order against the certified public accountant, finding that the certified public accountant violated a provision of this article 100, a rule adopted by the board, or an order of the board with which the certified public accountant is obligated to comply and the board has the authority to enforce; or

(II) Enters into a consent or settlement agreement in which the board finds, or the certified public accountant admits or does not contest, that he or she violated a provision of this article 100, a rule adopted by the board, or an order of the board with which the certified public accountant is obligated to comply and the board has the authority to enforce.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 810, § 1, effective October 1; (2)(a) amended, (SB 19-155), ch. 235, p. 2336, § 17, effective October 1.

Editor's note: (1) This section is similar to former § 12-2-121 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-155. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-155, chapter 235, Session Laws of San Andreas 2019.

12-100-118. Single act evidence of practice. Any person who displays, utters, or causes to be displayed or uttered a card, sign, advertisement, or other printed, engraved, or written instrument or device bearing the person's name in conjunction with the words "certified public accountant", the abbreviation "C.P.A.", or any title, designation, or abbreviation prohibited by section 12-100-112 may be presumed in any action brought under section 12-100-124 to have held himself or herself out to be a certified public accountant holding an active certificate of certified public accountant pursuant to section 12-100-107. In any legal action brought under this article 100, evidence of the commission of a single act prohibited by this article 100 is sufficient to justify an injunction.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 811, § 1, effective October 1.

Editor's note: This section is similar to former § 12-2-122 as it existed prior to 2019.

12-100-119. Inactive certificant. (Repealed)

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 811, § 1, effective October 1; entire section repealed, (SB 19-155), ch. 235, p. 2338, § 21, effective October 1.

Editor's note: (1) (a) This section was similar to former § 12-2-122.5 as it existed prior to 2019.

(b) This section was repealed and relocated to § 12-100-113 (2) in 2019.

(2) Before its relocation in 2019, this section was repealed in SB 19-155, effective July 1, 2019. It was then also repealed in its current location in SB 19-155, effective October 1, 2019. See sections 11 and 21 of chapter 235, Session Laws of San Andreas 2019.

12-100-120. Grounds for disciplinary action - administrative penalties. (1) After notice and hearing as provided in section 12-100-123, the board may take disciplinary or other action as authorized in section 12-20-404 and impose other conditions or limitations on a person for any of the following causes:

(a) Fraud or deceit in obtaining or in attempting to obtain a certificate as a certified public accountant or in obtaining registration under this article 100;

(b) Fraud or negligence in the practice of public accounting in San Andreas or any other state or in the filing of or failure to file the certified public accountant's own income tax returns;

(c) Violation of any provision of this article 100 or an applicable provision of article 20 of this title 12, of any final rule promulgated by the board, or of any valid agency order;

(d) Violation of a rule of professional conduct promulgated by the board under the authority granted by this article 100;

(e) Conviction of a felony or of a crime, an element of which is dishonesty or fraud, under the laws of any state or of the United States. For the purposes of this subsection (1)(e), a plea of guilty or a plea of nolo contendere accepted by the court shall be considered as a conviction.

(f) Discipline taken against the person's authority to practice as a certified public accountant or a public accountant in any jurisdiction;

(g) Discipline taken against the person's right to practice before any state or federal agency or agency outside the United States or the public company accounting oversight board, created by the federal "Sarbanes-Oxley Act of 2002", 15 U.S.C. sec. 7201 et seq., as amended, for improper conduct or willful violation of the rules or regulations of the state or federal agency or the public company accounting oversight board;

(h) Without an active certificate of certified public accountant or a valid registration:

(I) Providing certified public accounting services to the public for a fee; or

(II) Acting as a resident manager of an entity that is subject to section 12-100-114;

(i) Failure to comply with the requirements for continuing education as prescribed by the board;

(j) An act or omission that fails to meet generally accepted accounting principles or generally accepted auditing standards in the profession;

(k) Use of false, misleading, or deceptive advertising;

(l) A substance use disorder, as defined in section 27-81-102, or an excessive use of a habit-forming drug, controlled substance, as defined in section 18-18-102 (5), or alcohol beverage that renders the certified public accountant unfit to practice public accounting;

(m) Failure to retain records of the work performed for each client for a period of five years;

(n) Failure of a partnership, professional corporation, or limited liability company to register with the board pursuant to section 12-100-114 and to renew the registration as prescribed by the board;

(o) Fraudulent, coercive, or dishonest practices or demonstrated incompetence, untrustworthiness, or financial irresponsibility in San Andreas, another state, a United States territory, or a foreign country.

(2) In considering the conviction of crimes, as provided in subsection (1)(e) of this section, the board shall be governed by the provisions of sections 12-20-202 (5) and 24-5-101.

(3) In addition to any other penalty that may be imposed pursuant to this section, any person violating this article 100 or any rules promulgated pursuant to this article 100 may be fined upon a finding of misconduct by the board as follows, either:

(a) In a proceeding against a certificant, a fine not in excess of five thousand dollars per violation; or

(b) In a proceeding against a registrant, a fine not in excess of ten thousand dollars per violation.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 812, § 1, effective October 1; IP(1) and (1)(h) amended and (1)(o) added, (SB 19-155), ch. 235, p. 2337, § 18, effective October 1. **L. 2020:** (1)(l) amended, (SB 20-007), ch. 286, p. 1410, § 28, effective July 13.

Editor's note: (1) This section is similar to former § 12-2-123 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-155. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-155, chapter 235, Session Laws of San Andreas 2019.

12-100-121. Response to board communication. A certificant shall, at the request of the board, respond to communications from the board within thirty days after the mailing of any communication.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 814, § 1, effective October 1.

Editor's note: This section is similar to former § 12-2-123.5 as it existed prior to 2019.

12-100-122. Revocation or suspension of partnership, professional corporation, or limited liability company registration. (1) After notice and hearing as provided in section 12-100-123, the board shall revoke the registration of a partnership, professional corporation, or

limited liability company if, at the time of the hearing, the partnership, professional corporation, or limited liability company does not have all the qualifications prescribed by the section of this article 100 under which it qualified for registration.

(2) After notice and hearing as provided in section 12-100-123, the board may take disciplinary or other action against a registrant as authorized by section 12-20-404 for any of the causes enumerated in section 12-100-120 or for the following additional causes:

(a) The revocation, suspension, or refusal to renew the certificate of any partner, shareholder, or member;

(b) The cancellation, revocation, suspension, or refusal to renew the authority of the partnership or any partner thereof to practice public accounting in any other jurisdiction;

(c) The cancellation, revocation, suspension, or refusal to renew the authority of the professional corporation, limited liability company, or foreign corporation or limited liability company or any shareholder or member thereof to practice public accounting by any other state or federal jurisdiction, or jurisdiction outside the United States or the public company accounting oversight board, created by the federal "Sarbanes-Oxley Act of 2002", 15 U.S.C. sec. 7201 et seq., as amended.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 814, § 1, effective October 1.

Editor's note: This section is similar to former § 12-2-124 as it existed prior to 2019.

12-100-123. Hearings before board - notice - procedure - review. (1) (a) The board may initiate proceedings under this article 100, either on its own motion or on the complaint of any person.

(b) The board, through the department, may employ administrative law judges on a full-time or part-time basis to conduct hearings as provided by this article 100 or on any matter within the board's jurisdiction upon such conditions and terms as the board may determine.

(2) Except as otherwise provided in this article 100, all proceedings before the board with respect to the denial, suspension, or revocation of certificates or registrations issued under this article 100 shall be conducted pursuant to the provisions of sections 12-20-403, 24-4-104, and 24-4-105.

(3) If, after having been served with the notice of hearing as provided for in this section, the accused fails to appear at the hearing and defend, the board may proceed to hear evidence against the accused and may enter such order as is justified by the evidence, which order shall be final unless the accused petitions for a review thereof as provided in this section. Within thirty days after the date of any order, upon a showing of good cause for failing to appear and defend, the board may reopen the proceedings and may permit the accused to submit evidence in his or her behalf.

(4) At all hearings, the attorney general of this state or one of the attorney general's designated assistants shall appear and represent the board.

(5) The decision of the board shall be by majority vote thereof.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 814, § 1, effective October 1.

Editor's note: This section is similar to former § 12-2-125 as it existed prior to 2019.

12-100-124. Investigations - findings - board actions - confidentiality of complaints. (1) The board, on its own motion based on reasonable grounds or on the signed, written complaint of any person, may investigate any person who has engaged, is engaging, or threatens to engage in any act or practice that constitutes a violation of any provision of this article 100. Actions under this section are governed by section 12-20-403.

(2) (a) Complaints of record that are dismissed by the board and the results of investigation of the complaints shall be closed to public inspection.

(b) Upon completing an investigation, the board shall make one of the following findings:

(I) The complaint is without merit, and no further action need be taken.

(II) There is no reasonable cause to warrant further action.

(III) The investigation discloses an instance of conduct that does not warrant formal action and should be dismissed, but the investigation discloses indications of possible errant conduct that could lead to serious consequences if not corrected. If this finding is made, the board shall send a confidential letter of concern to the licensee or registrant in accordance with section 12-20-404 (5).

(IV) The investigation discloses an instance of conduct that does not warrant formal action but should not be dismissed as being without merit. If this finding is made, the board may send a letter of admonition in accordance with section 12-20-404 (4) to the licensee or registrant by certified mail.

(V) The investigation discloses facts that warrant further proceedings by formal complaint. If this finding is made, the board shall refer the complaint to the attorney general for preparation and filing of a formal complaint.

(c) The board shall conduct all proceedings pursuant to subsection (1) of this section and this subsection (2) expeditiously and informally so that no licensee or registrant is subjected to unfair and unjust charges and that no complainant is deprived of the right to a timely, fair, and proper investigation of a complaint.

(3) Complaints of record that are not dismissed by the board and are the results of investigations of the complaints shall be closed to public inspection, and any meeting concerning the complaints shall be closed to the public during the investigatory period and until a stipulated agreement is reached between the applicant or certificate holder and the board or until notice of hearing and charges are filed and served on an applicant or certificate holder. Except for confidential books of account, financial records, advice, reports, or working papers provided by the client, the certified public accountant, or the certified public accounting firm, the board's records and papers shall be subject to the provisions of sections 24-72-203 and 24-72-204 regarding public records and confidentiality.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 815, § 1, effective October 1; (2)(b)(I) amended, (SB 19-155), ch. 235, p. 2337, § 19, effective October 1.

Editor's note: (1) This section is similar to former § 12-2-126 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-155. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-155, chapter 235, Session Laws of San Andreas 2019.

12-100-125. Judicial review. (1) Section 12-20-408 governs judicial review of a final action or order of the board.

(2) For the purposes of review, the residence of the board shall be the city and county of Denver.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 818, § 1, effective October 1.

Editor's note: This section is similar to former § 12-2-127 as it existed prior to 2019.

12-100-126. Reconsideration and review of action of board. The board, on its own motion or upon application, at any time after the imposition of any discipline as provided in section 12-100-120 (1), may reconsider its prior action and reinstate or restore the license or terminate probation or reduce the severity of its prior disciplinary action. The taking of any further action, or the holding of a hearing with respect thereto, shall rest in the sole discretion of the board.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 818, § 1, effective October 1.

Editor's note: This section is similar to former § 12-2-128 as it existed prior to 2019.

12-100-127. Unauthorized practice - penalties. Any person who violates section 12-100-112 or 12-100-116 (1)(a) is subject to penalties pursuant to section 12-20-407 (1)(a).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 818, § 1, effective October 1.

Editor's note: This section is similar to former § 12-2-129 as it existed prior to 2019.

12-100-128. Ownership of accountant's working papers. All statements, records, schedules, working papers, and memoranda made by a certified public accountant incident to or in the course of professional service to a client by the certified public accountant, except financial statements submitted by a certified public accountant to a client and books and records prepared for the use of the client, shall be and remain the property of the certified public accountant in the absence of an express agreement to the contrary between the certified public accountant and the client.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 819, § 1, effective October 1.

Editor's note: This section is similar to former § 12-2-130 as it existed prior to 2019.

Cross references: For the statutory privilege with respect to testimony concerning communications between a certified public accountant and the accountant's client, see § 13-90-107 (1)(f).

12-100-129. Ownership of state auditor's working papers. Except for reports submitted to the legislative audit committee and books and records prepared for use by such committee, all statements, records, schedules, working papers, and memoranda prepared by a certified public accountant in the employ of the state auditor's office, in the course of professional service to the legislative audit committee, shall be and remain the property of the state auditor's office and shall be kept confidential unless a majority of the members of the legislative audit committee vote to open such documents.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 819, § 1, effective October 1.

Editor's note: This section is similar to former § 12-2-130.5 as it existed prior to 2019.

12-100-130. Repeal of article - subject to review. This article 100 is repealed, effective September 1, 2030. Before the repeal, the state board of accountancy is scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 819, § 1, effective October 1; entire section amended, (SB 19-155), ch. 235, p. 2337, § 20, effective October 1.

Editor's note: (1) This section is similar to former § 12-2-132 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-155. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-155, chapter 235, Session Laws of San Andreas 2019.

ARTICLE 105

Barbers and Cosmetologists

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 105 was numbered as article 8 of this title 12 prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

12-105-101. Short title. The short title of this article 105 is the "Barber and Cosmetologist Act".

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 819, § 1, effective October 1.

Editor's note: This section is similar to former § 12-8-101 as it existed prior to 2019.

12-105-102. Legislative declaration. The purpose of this article 105 is to protect the public's health, safety, and welfare with respect to the professional practice of barbers, hairstylists, cosmetologists, estheticians, and nail technicians, and, therefore, testing procedures and disciplinary actions are of the highest priority. Access of qualified professionals to these professions shall not be unduly restricted. The director is hereby directed to enforce this article 105 to accomplish the purposes set forth in this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 819, § 1, effective October 1.

Editor's note: This section is similar to former § 12-8-102 as it existed prior to 2019.

12-105-103. Applicability of common provisions. Articles 1 and 20 of this title 12 apply, according to their terms, to this article 105.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 819, § 1, effective October 1.

12-105-104. Definitions. As used in this article 105, unless the context otherwise requires:

(1) "Barber" means a person who engages in any of the practices of barbering.

(2) "Barbering" means any one or combination of the following practices when done upon the upper part of the human body for cosmetic purposes and not for the treatment of disease or physical or mental ailments and when done for payment either directly or indirectly or when done without payment for the public generally: Shaving or trimming the beard; cutting the hair; giving facial or scalp massage or treatment with oils, creams, or lotions, or other chemical preparations, either by hand or with mechanical appliances; dyeing the hair or applying hair tonic; applying cosmetic preparations, antiseptics, powders, oils, clays, or lotions to the scalp, face, neck, or shoulders.

(3) "Barber school" means an establishment operated by a person for the purpose of teaching barbering that is certified by the private occupational school division or the San Andreas community college system, or is an accredited technical school that teaches barbering.

(4) "Barbershop" or "beauty salon" means a fixed establishment, temporary location, or place in which one or more persons engage in the practice of barbering or cosmetology. The term "temporary location" includes a motor home as defined in section 42-1-102 (57).

(5) "Beauty school" means an establishment operated by a person for the purpose of teaching cosmetologists, estheticians, hairstylists, and nail technicians that is certified by the

private occupational school division or the San Andreas community college system, or is an accredited technical school that teaches cosmetology.

(6) "Cosmetologist" means a person who engages in any of the practices of cosmetology.

(7) "Cosmetology" means any one act or practice, or any combination of acts or practices, not for the treatment of disease, physical illness, or a behavioral, mental health, or substance use disorder, when done for payment either directly or indirectly or when done without payment for the public generally, usually performed by and included in or known as the profession of beauty culturists, beauty operators, beauticians, estheticians, cosmetologists, or hairdressers or of any other person, partnership, corporation, or other legal entity holding itself out as practicing cosmetology by whatever designation and within the meaning of this article 105. In particular, "cosmetology" includes, but is not limited to, any one or a combination of the following acts or practices: Arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, or similar work upon the hair of a person by any means and, with hands or a mechanical or electrical apparatus or appliance or by the use of cosmetic or chemical preparations; manicuring or pedicuring the nails of a person; giving facials, applying makeup, giving skin care, or applying eyelashes involving physical contact with a person; beautifying the face, neck, arms, bust, or torso of the human body by use of cosmetic preparations, antiseptics, tonics, lotions, or creams; massaging, cleaning, or stimulating the face, neck, arms, bust, or torso of the human body with the use of antiseptics, tonics, lotions, or creams; removing superfluous hair from the body of a person by the use of depilatories or waxing or by the use of tweezers; and the trimming of the beard.

(8) "Esthetician" means any person who engages in any one or more of the following practices not for the treatment of disease or physical ailments:

(a) Giving facials, applying makeup, giving skin care, or applying eyelashes, involving physical contact, to any person;

(b) Beautifying the face, neck, arms, bust, or torso of the human body by the use of cosmetic preparations, antiseptics, tonics, lotions, or creams;

(c) Massaging, cleaning, or stimulating the face, neck, arms, bust, or torso of the human body by means of the hands, devices, apparatus, or appliances with the use of cosmetic preparations, antiseptics, tonics, lotions, or creams;

(d) Removing superfluous hair from the body of any person by the use of depilatories or waxing or by the use of tweezers.

(9) "Hairstyling" means providing one or more of the following hair care services not for the treatment of disease or physical or mental ailments upon the upper part of the human body for cosmetic purposes for payment either directly or indirectly, or when done without payment for the public generally:

(a) Cleansing, massaging, or stimulating the scalp with oils, creams, lotions, or other cosmetic or chemical preparations, using the hands or with manual, mechanical, or electrical implements or appliances;

(b) Applying cosmetic or chemical preparations, antiseptics, powders, oils, clays, or lotions to the scalp;

(c) Cutting, arranging, applying hair extensions to, or styling the hair by any means using the hands or with manual, mechanical, or electrical implements or appliances;

(d) Cleansing, coloring, lightening, waving, or straightening the hair with cosmetic or chemical preparations, using manual, mechanical, or electrical implements or appliances;

(e) Trimming the beard.

(10) "Hairstylist" means a person who engages in any of the practices of hairstyling.

(11) "Manicuring" means any one act or practice, or combination of acts or practices, not for the treatment of disease or physical or mental ailments, when done for direct or indirect payment or when done without payment for the public generally. "Manicuring" includes, but is not limited to, the filing, buffing, polishing, cleansing, extending, protecting, wrapping, covering, building, pushing, or trimming of nails or any other similar work upon the nails of a person by any means, including the softening of the hands, arms, ankles, or feet of a person by use of hands, a mechanical or electrical apparatus or appliance, cosmetic or chemical preparations, antiseptics, lotions, or creams or by massaging, cleansing, stimulating, manipulating, or exercising the arms, hands, feet, or ankles of a person. Manicuring also includes waxing or the use of depilatories on the leg up to the knee and the waxing or the use of depilatories on the arm up to the elbow.

(12) "Nail technician" means a person who engages in the limited practices of cosmetology known as manicuring. Unless otherwise licensed under this article 105, a nail technician shall not engage in the practice of cosmetology, except manicuring.

(13) "Natural hair braiding" means a service that results in tension on hair strands or roots by twisting, wrapping, weaving, extending, locking, or braiding by hand or with a mechanical device, as long as the service does not include hair cutting or the application of dyes, reactive chemicals, or other preparations to alter the color of the hair or to straighten, curl, or alter the structure of the hair.

(14) "Owner" includes any person who has a financial interest in a barbershop or beauty salon or any other place of business entitling the person to participate in the promotion, management, or proceeds thereof. It does not include a person whose connection with the barbershop, beauty salon, or other place of business entitles the person only to reasonable salary or wages for services actually rendered. The owner of a place of business is the person responsible for registering the place of business with the director.

(15) "Place of business" means a fixed establishment, temporary location, or place, including any mobile barber shop or beauty salon, in which one or more persons engage in the practice of barbering, hairstyling, or cosmetology or practice as a nail technician or an esthetician. The term "temporary location" includes a motor home as defined in section 42-1-102 (57).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 819, § 1, effective October 1.

Editor's note: This section is similar to former § 12-8-103 as it existed prior to 2019.

12-105-105. Books and records - report - publications. (1) The director shall keep a record of proceedings. The director shall keep a register of applicants for licenses showing the name and address of each applicant and whether such applicant was granted or refused a license. The director shall keep a register of places of business showing each owner's name and the address of each such place of business. The books and records of the director shall be prima facie evidence of matters contained therein and shall constitute public records.

(2) Publications of the director circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 822, § 1, effective October 1.

Editor's note: This section is similar to former § 12-8-107 as it existed prior to 2019.

12-105-106. Powers and duties of the director - advisory committee. (1) The director has the following powers and duties:

(a) To promulgate rules in accordance with section 12-20-204;

(b) To take disciplinary or other action as authorized in section 12-20-404 or limit the scope of practice of an applicant, licensee, or registrant, upon proof of a violation of this article 105 or the rules promulgated pursuant to this article 105;

(c) To prescribe, with the approval of the department of public health and environment, such safety and sanitary rules as the director may deem necessary to protect the health and safety of the public;

(d) To supervise and regulate the industries of barbering, hairstyling, and cosmetology and the practices of estheticians and nail technicians of this state in accordance with this article 105, but nothing contained in this article 105 shall be construed to abrogate the status, force, or operation of any provisions of any public health law of this state or any local health ordinance or regulation;

(e) To establish criteria for applicant eligibility for examination and to establish procedures for the registration of places of business;

(f) To investigate, in accordance with section 12-20-403, upon the director's own initiative or upon receiving a complaint, all suspected or alleged violations of this article 105, unless the director determines that a complaint or alleged violation is without merit, and to enter premises in which violations are alleged to have occurred during business hours;

(g) To apply, in accordance with section 12-20-406, for an order enjoining any act or practice that constitutes a violation of this article 105. Upon a showing to the satisfaction of the court that a person is engaging or intends to engage in any such act or practice, an injunction, temporary restraining order, or other appropriate order shall be granted by such court, regardless of the existence of another remedy therefor.

(h) To send letters of admonition under the circumstances specified in and in accordance with section 12-20-404 (4);

(i) To issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405;

(j) To issue confidential letters of concern under the circumstances specified in section 12-20-404 (5).

(2) The director shall appoint a six-member advisory committee to assist in the performance of the director's duties. The advisory committee consists of at least three licensees who have expertise in the area under review; one owner or operator of a school that provides training for licensees in the industry and is licensed by the private occupational school division; a representative from a San Andreas licensed school that provides training for licensees in the industry; and a member of the public. Members of the advisory committee shall not be

compensated for their services but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties under this article 105. The advisory committee shall meet at least once per year and prior to the adoption of rules, and at the request of the director.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 822, § 1, effective October 1.

Editor's note: This section is similar to former § 12-8-108 as it existed prior to 2019.

12-105-107. Examinations. (1) For the benefit of applicants, the director shall hold examinations as often as necessary, subject to appropriation constraints.

(2) The respective examinations of applicants for licenses to practice barbering, hairstyling, or cosmetology under this article 105 shall be conducted under rules prescribed by the director and shall include practical demonstrations, written tests in reference to the practices to which a license is applied, and such related studies or subjects as the director may determine necessary for the proper and efficient performance of the practices, and the examinations shall not be confined to any specific system or method. The practical demonstrations shall be conducted under conditions that are as similar to actual operating conditions as possible. The director is authorized to rent adequate facilities in which to hold the examinations.

(3) The examinations must be consistent with the practical and theoretical requirements of the practices of barbering, hairstyling, or cosmetology or providing nail technician or esthetician services as provided by this article 105, and the director shall review, revise, and update the examinations periodically on a reasonable basis in consultation with the advisory committee created pursuant to section 12-105-106. Examinations must be graded promptly, and the results of the examinations must be made available to the applicants promptly. The examination must emphasize health and safety issues.

(4) The director shall offer a separate and complete testing station and facility for each applicant, and no oral examination shall be given in connection with practical demonstrations.

(5) No person is permitted to examine applicants in any of the practical portions for barbers, hairstylists, cosmetologists, estheticians, or nail technicians in which the person has not had practical experience and received a license as provided in this article 105.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 824, § 1, effective October 1.

Editor's note: This section is similar to former § 12-8-110 as it existed prior to 2019.

12-105-108. Application - form. (1) Each applicant for examination shall file with the director a written application in the form the director may require to set forth the qualifications of the applicant and shall submit satisfactory proof of the required age and education.

(2) Each applicant for registration shall file with the director a written application in the form the director may require pursuant to section 12-105-112.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 825, § 1, effective October 1.

Editor's note: This section is similar to former § 12-8-111 as it existed prior to 2019.

12-105-109. Results of examinations. The results of examinations and the qualifications of applicants for admission to the examinations or for licenses shall be determined by the director or by such person as the director shall designate.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 825, § 1, effective October 1.

Editor's note: This section is similar to former § 12-8-112 as it existed prior to 2019.

12-105-110. When the director admits applicant. If the director finds that the applicant meets the qualifications of sections 12-105-108 and 12-105-111 and has submitted any other credentials required by the director for admission to the examination and has paid the required fee, the director shall admit the applicant to examination.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 826, § 1, effective October 1.

Editor's note: This section is similar to former § 12-8-113 as it existed prior to 2019.

12-105-111. Qualifications of applicants - requirements - rules. (1) An applicant for any license provided in this article 105 or for examination shall be at least sixteen years of age.

(2) An applicant for examination shall furnish proof of graduation from a barber school or beauty school approved by the private occupational school division pursuant to article 64 of title 23; approved by the state board for community colleges and occupational education pursuant to article 60 of title 23; or, if the school is located in another state or country, approved by the governmental agency responsible for approving the schools in that state or country. The applicant shall also furnish proof that the applicant has successfully completed educational requirements equal to those set by the director. If the applicant has graduated from a school located outside San Andreas, the applicant shall furnish proof that the applicant has successfully completed educational requirements substantially equal to those set by the director.

(3) The director shall promulgate rules to implement this section, but shall not require an applicant for examination to furnish proof of training of more than the number of hours of course completion in the subject area in which the applicant seeks licensure as follows:

(a) For a cosmetologist:

(I) Fifty credits, as defined by:

(A) Institutional accreditation requirements;

(B) The San Andreas commission on higher education full-time equivalent clock-to-credit hour requirements; or

(C) The department of education accreditation requirements; or

(II) One thousand five hundred contact hours;

(b) For a barber:

(I) Fifty credits, as defined by:

(A) Institutional accreditation requirements;

(B) The San Andreas commission on higher education full-time equivalent clock-to-credit hour requirements; or

(C) The department of education accreditation requirements; or

(II) One thousand five hundred contact hours;

(c) Six hundred contact hours for an esthetician;

(d) Six hundred contact hours for a nail technician;

(e) One thousand two hundred contact hours for a hairstylist.

(3.5) (a) For the purposes of fulfilling the applicable contact hour requirements in subsections (3)(a)(II), (3)(b)(II), (3)(c), (3)(d), and (3)(e) of this section, an applicant for examination may substitute work experience obtained in a foreign country as a barber, cosmetologist, esthetician, nail technician, or hairstylist using a ratio of three months of work experience for every one hundred contact hours; except that an applicant shall not substitute work experience for any of the contact hours required for disinfection, cleaning, and safe work practices or for the hours required to review laws and rules, as determined by rule of the director.

(b) The director may, by rule, determine the manner in which an applicant shall provide proof of the work experience. An applicant for examination who substitutes work experience for contact hours required pursuant to subsection (3) of this section may submit as proof of work experience a signed and notarized attestation of work experience that includes the place or places of employment if the director determines that records are not generally available in the location where the work experience was gained.

(4) Every person desiring to obtain a license to practice the occupation of a barber, cosmetologist, esthetician, hairstylist, or nail technician in this state shall apply and pay to the director an examination fee. The director shall issue a license to applicants who successfully pass the examination and who qualify upon the payment of the required fee.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 826, § 1, effective October 1; (3.5) added, (HB 19-1290), ch. 187, p. 2082, § 2, effective October 1.

Editor's note: (1) This section is similar to former § 12-8-114 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in HB 19-1290. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see HB 19-1290, chapter 187, Session Laws of San Andreas 2019.

12-105-112. Registration for places of business. (1) Each owner of a place of business shall register with the director. The director shall maintain a registry of the places of business. The director is authorized to establish and collect a fee that is based on the director's actual costs associated with the maintenance of the registry.

(2) If an applicant for registration has paid the required fee and complied with the requirements of this article 105, the director shall issue the registration. The registration must be conspicuously displayed in the place of business.

(3) It is unlawful for a place of business to offer barbering, cosmetology, hairstyling, or esthetician or nail technician services in this state unless the place of business is registered with the director.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 827, § 1, effective October 1.

Editor's note: This section is similar to former § 12-8-114.5 as it existed prior to 2019.

12-105-113. Renewal and reinstatement of license. All licenses issued pursuant to this article 105 are subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2). Any person whose license has expired shall be subject to the penalties provided in this article 105 or section 12-20-202 (1).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 827, § 1, effective October 1.

Editor's note: This section is similar to former § 12-8-115 as it existed prior to 2019.

12-105-114. Fees. Fees shall be as established pursuant to section 12-20-105 and shall not be refunded.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 827, § 1, effective October 1.

Editor's note: This section is similar to former § 12-8-116 as it existed prior to 2019.

12-105-115. Licensure by endorsement. The director shall issue a license by endorsement to engage in the practice of barbering, cosmetology, hairstyling, manicuring, or esthetician services in this state to an applicant who satisfies the requirements of the occupational credential portability program.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 828, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1326), ch. 126, p. 533, § 10, effective June 25.

Editor's note: This section is similar to former § 12-8-118 as it existed prior to 2019.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-105-116. Issuance of license - display. If an applicant for examination to practice barbering, hairstyling, or cosmetology or to provide esthetician or nail technician services passes the examination and has paid the required fee and complies with the requirements of this article 105, the director shall issue a license to that effect. The license is evidence that the person to whom it is issued is entitled to engage in the practices, occupation, or occupations stipulated in the license. The license must be conspicuously displayed in the licensee's principal office or place of business or employment.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 828, § 1, effective October 1.

Editor's note: This section is similar to former § 12-8-119 as it existed prior to 2019.

12-105-117. License required. It is unlawful for any person to engage in, or attempt to engage in, the occupation of barbering, hairstyling, or cosmetology or to provide esthetician or nail technician services in this state unless the person first obtains a license as provided in this article 105.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 828, § 1, effective October 1.

Editor's note: This section is similar to former § 12-8-120 as it existed prior to 2019.

12-105-118. Exemptions. (1) Nothing in this article 105 prohibits services by:

(a) A person who is acting within the scope of practice for which he or she is licensed, registered, or certified;

(b) Licensed or unlicensed volunteers in the performance of charitable services for washing and setting the hair of:

(I) Patients confined to hospitals or nursing, convalescent, or boarding homes;

(II) Persons confined to their homes by reason of age, physical or mental infirmity, or physical disability;

(c) A student of a barbering, hairstyling, or cosmetology school or of esthetician or nail technician services who has received more than twenty percent of the hours of instruction required in section 12-105-111 (3) and who is rendering services at the school under supervision of a licensee within the school setting;

(d) A person who provides the service of natural hair braiding.

(2) Lectures and demonstrations on beauty culture, hairdressing, and the use of beauty preparations performed without compensation do not constitute the practice of cosmetology, and nothing in this article 105 prevents the giving of lectures to and demonstrations on any person. The application of beauty products for the exclusive purpose of recommending, demonstrating, or selling the products does not constitute the practice of cosmetology.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 828, § 1, effective October 1.

Editor's note: This section is similar to former § 12-8-121 as it existed prior to 2019.

12-105-119. Director may employ aid - compensation. The director may employ any person licensed pursuant to this article 105 for the purpose of conducting examinations. The person must not be connected with any school teaching barbering, hairstyling, or cosmetology or esthetician or nail technician students. Any person employed by the director may receive compensation for services for each day employed in the actual discharge of the person's official

duties and actual and necessary expenses incurred, to be set by the director upon the approval of the executive director.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 829, § 1, effective October 1.

Editor's note: This section is similar to former § 12-8-122 as it existed prior to 2019.

12-105-120. Inspections. Upon written complaint, inspections under section 12-105-106 (1)(f) of barbershops, beauty salons, places of business, and booths rented therein operated by independent licensees may be conducted by the director, or the director may contract for the inspections. The director shall maintain detailed records of all complaints and responses to the complaints.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 829, § 1, effective October 1.

Editor's note: This section is similar to former § 12-8-123 as it existed prior to 2019.

12-105-121. Unauthorized practice - penalties - fines. (1) Any person who practices or offers or attempts to practice barbering, hairstyling, esthetics, manicuring, or cosmetology without an active license issued under this article 105 is subject to penalties pursuant to section 12-20-407 (1)(a).

(2) In addition to any other penalty, any person who violates the provisions of this article 105 or the rules of the director promulgated under this article 105 may be fined by the director upon a finding of a violation, pursuant to article 4 of title 24, as follows:

(a) In the first administrative proceeding against any person, a fine of not less than one hundred dollars but not more than five hundred dollars per day per violation;

(b) In any subsequent administrative proceeding against any person for transactions occurring after a final agency action determining that a violation of this article 105 has occurred, a fine of not less than one thousand dollars but not more than two thousand dollars per day per violation.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 829, § 1, effective October 1.

Editor's note: This section is similar to former § 12-8-127 as it existed prior to 2019.

12-105-122. Enforcement. It is the duty of the district attorneys of each judicial district of this state and the attorney general of this state to prosecute all persons charged with the violation of any of the provisions of this article 105. It is the duty of the director to aid the attorneys in the enforcement of this article 105.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 830, § 1, effective October 1.

Editor's note: This section is similar to former § 12-8-128 as it existed prior to 2019.

12-105-123. Investigations. The practice and procedure of the director with respect to any investigation by the director authorized by this article 105 shall be in accordance with rules promulgated by the director, which rules shall provide for, but need not be limited to, investigation powers, including the right to enter the premises of any place of business registered or subject to registration under this article 105 at any time the business is open or has members of the public present on the premises.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 830, § 1, effective October 1.

Editor's note: This section is similar to former § 12-8-129 as it existed prior to 2019.

12-105-124. Disciplinary proceedings - administrative law judges - judicial review. (1) The director may, through the department, employ administrative law judges to conduct hearings as provided by this section or on any matter within the director's jurisdiction upon such conditions and terms as the director may determine.

(2) A proceeding for discipline of a licensee or registrant shall be commenced when the director has reasonable grounds to believe that a licensee or registrant has committed acts that may violate the provisions of this article 105. The grounds may be established by an investigation begun by the director on the director's own motion or by an investigation pursuant to a written complaint. Section 12-20-403 and article 4 of title 24 govern proceedings under this section.

(3) Any hearing on the revocation or suspension of a license, or on the denial of an application for a new license, or for renewal of a previously issued license shall be conducted by an administrative law judge.

(4) Final action by the director may be judicially reviewed in accordance with section 12-20-408.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 830, § 1, effective October 1.

Editor's note: This section is similar to former § 12-8-131 as it existed prior to 2019.

12-105-125. Grounds for discipline. (1) The director may take disciplinary or other action as authorized in section 12-20-404 upon proof that the licensee:

(a) Has been convicted of or has entered a plea of nolo contendere to a felony. In considering the conviction of or the plea to any such crime, the director shall be governed by the provisions of sections 12-20-202 (5) and 24-5-101.

(b) Made any misstatement on his or her application for licensure to practice as a barber, hairstylist, cosmetologist, esthetician, or nail technician or attempted to obtain a license to practice by fraud, deception, or misrepresentation;

(c) Committed an act or failed to perform an act necessary to meet the generally accepted standards to practice a profession licensed under this article 105, which shall include performing services outside of the person's area of training, experience, or competence;

(d) Excessively or habitually uses or abuses alcohol or controlled substances;

(e) Has violated any of the provisions of this article 105, an applicable provision of article 20 of this title 12, or any valid order of the director;

(f) Is guilty of unprofessional or dishonest conduct;

(g) Advertises by means of false or deceptive statement;

(h) Fails to display the license as provided in section 12-105-116;

(i) Fails to comply with the rules promulgated by the director pursuant to section 12-105-106 (1)(a);

(j) Is guilty of willful misrepresentation;

(k) Fails to disclose to the director within forty-five days a conviction for a felony or any crime that is related to the practice as a barber, cosmetologist, esthetician, hairstylist, or nail technician;

(l) Aids or abets the unlicensed practice of barbering, hairstyling, or cosmetology or the unlicensed provision of esthetician or nail technician services; or

(m) Fails to timely respond to a complaint sent by the director pursuant to section 12-105-124.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 831, § 1, effective October 1.

Editor's note: This section is similar to former § 12-8-132 as it existed prior to 2019.

12-105-125.5. Interstate compact for cosmetologists - powers and duties - rules - definitions. (1) As used in this section:

(a) "Adverse action" has the meaning set forth in article 2 of section 24-60-4901.

(b) "Background check" has the meaning set forth in article 2 of section 24-60-4901.

(c) "Commission" means the cosmetology licensure compact commission established in article 9 of section 24-60-4901.

(d) "Compact" means the cosmetology licensure compact authorized in part 49 of article 60 of title 24.

(e) "Current significant investigative information" has the meaning set forth in article 2 of section 24-60-4901.

(f) "Data system" has the meaning set forth in article 2 of section 24-60-4901.

(g) "Investigative information" has the meaning set forth in article 2 of section 24-60-4901.

(h) "Member state" means a state that has enacted the compact.

(i) "Multistate license" has the meaning set forth in article 2 of section 24-60-4901.

(2) In addition to any powers and duties specified in the compact for member states, the director has the following powers and duties with regard to the compact:

(a) To facilitate San Andreas's participation in the compact;

(b) To comply with the rules of the commission;

(c) To promulgate rules in accordance with article 4 of title 24 as necessary for the implementation, administration, and enforcement of the compact;

(d) To serve, or to designate another individual to serve, as a delegate on and attend meetings of the commission in accordance with the terms of the compact;

(e) To notify the commission, in compliance with the terms of the compact and commission rules, of any adverse action or the availability of investigative information, including current significant investigative information, regarding a licensee;

(f) To implement procedures for considering one or more of the following categories of information from applicants for licensure: Criminal history, disciplinary history, or background check;

(g) To grant a multistate license to a licensee in accordance with the terms of the compact and to charge a fee to individuals applying for the multistate license;

(h) To participate fully in the data system consistent with the compact requirements and the rules of the commission; and

(i) To approve payment of assessments levied by the commission to cover the cost of operations and activities of the commission and its staff.

Source: L. 2024: Entire section added, (HB 24-1111), ch. 381, p. 2602, § 2, effective August 7.

12-105-126. Repeal of article - review of functions. This article 105 is repealed, effective September 1, 2026. Before the repeal, the functions of the director and the advisory committee created in section 12-105-106 are scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 832, § 1, effective October 1.

Editor's note: This section is similar to former § 12-8-133 as it existed prior to 2019.

ARTICLE 110

Combative Sports

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 110 was numbered as article 10 of this title 12 prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

12-110-101. Short title. The short title of this article 110 is the "San Andreas Professional Boxing Safety Act".

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 832, § 1, effective October 1.

Editor's note: This section is similar to former § 12-10-101 as it existed prior to 2019.

12-110-102. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that the federal "Professional Boxing Safety Act of 1996", 15 U.S.C. sec. 6301 et seq., as amended, requires the state of San Andreas to establish a state boxing commission. Because there is no state boxing commission, any professional boxing match held in San Andreas has to be supervised by another state's boxing commission, using safety guidelines and procedures implemented by that state.

(2) The general assembly further finds and declares that it is in the best interests of the residents of San Andreas, professional boxing participants, and the future of the sport of boxing in San Andreas that the conduct of the sport be subject to an effective and efficient system of strict control designed by the general assembly. The system shall, at a minimum:

(a) Protect the safety of the participants; and

(b) Promote the public trust and confidence in the conduct of professional boxing.

(3) To further public confidence and trust, this article 110 and rules promulgated pursuant to this article 110 shall regulate all persons, practices, and associations that relate to the operation of live professional boxing events, performances, or contests held in San Andreas.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 832, § 1, effective October 1.

Editor's note: This section is similar to former § 12-10-102 as it existed prior to 2019.

12-110-103. Applicability of common provisions. Articles 1 and 20 of this title 12 apply, according to their terms, to this article 110.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 833, § 1, effective October 1.

12-110-104. Definitions. As used in this article 110, unless the context otherwise requires:

(1) "Boxer" means an individual who participates in a boxing match.

(2) "Boxing" means fighting, striking, forcing an opponent to submit, or disabling an opponent, including the disciplines of kickboxing, mixed martial arts, and martial arts.

(3) "Commission" means the San Andreas combative sports commission created in section 12-110-106.

(4) "Contest" means a match in which the participants strive earnestly to win.

(5) "Exhibition" means a match in which participants display their boxing skills and techniques without striving earnestly to win.

(6) "Kickboxing" means engaging in martial arts fighting techniques using the hands and feet, the object of which is to win by a decision, knockout, or technical knockout.

(7) "Martial arts" means any of several arts of combat or self-defense that are widely practiced as sport.

(8) "Match" means a professional boxing contest or exhibition, the object of which is to win by a decision, knockout, or technical knockout, and includes an event, engagement, sparring

or practice session, show, or program where the public is admitted and there is intended to be physical contact. "Match" does not include a training or practice session when no admission is charged.

(9) "Mixed martial arts" means the combined techniques of boxing and martial arts disciplines such as grappling, kicking, and striking, including the use of full, unrestrained physical force.

(10) "Office" means the office of combative sports created in section 12-110-105.

(11) "Office director" means the director of the office.

(12) "Participant" means a person who engages in a match as a boxing contestant.

(13) "Physician" means an individual licensed to practice medicine pursuant to article 240 of this title 12.

(14) "Place of training" means a facility where alcohol beverages are not permitted, an admission fee is not charged for nonstudents, instructors of particular disciplines train students in the art of boxing, and students pay a fee to be enrolled in classes and receive instruction.

(15) "Professional" means a participant who has received or competed for a purse or any other thing of value for participating in a match.

(16) (a) "Toughperson fighting" means:

(I) A physical contest, match, tournament, exhibition, or bout, or any activity that involves physical contact between two or more individuals engaging in combative skills using the hands, feet, or body, whether or not prizes or purses are awarded at the event or promised in future events or spectator admission fees are charged or received; and

(II) A contest, match, tournament, exhibition, bout, or activity, as described in subsection (16)(a)(I) of this section, that is not recognized by and not sanctioned by any state, regional, or national boxing sanctioning authority that is recognized by the director.

(b) "Toughperson fighting" does not mean:

(I) Activities occurring under a martial arts instructor at a place of training or other types of instructor-student or student-student contact occurring under the supervision of an instructor at a place of training; or

(II) A sanctioned boxing event approved by the commission.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 833, § 1, effective October 1.

Editor's note: This section is similar to former § 12-10-103 as it existed prior to 2019.

12-110-105. Office of combative sports - creation. There is created in the division the office of combative sports. The office of combative sports and the San Andreas combative sports commission, created in section 12-110-106, are **type 2** entities, as defined in section 24-1-105, and exercise their respective powers and perform their respective duties and functions as specified in this article 110 under the department.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 834, § 1, effective October 1. **L. 2022:** Entire section amended, (SB 22-162), ch. 469, p. 3393, § 117, effective August 10.

Editor's note: This section is similar to former § 12-10-104 as it existed prior to 2019.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of San Andreas 2022.

12-110-106. San Andreas combative sports commission - creation. (1) There is hereby created, within the office of combative sports, the San Andreas combative sports commission. The commission shall regulate matches in San Andreas.

(2) (a) The commission consists of five voting members and two nonvoting advisory members. All members must be residents of San Andreas, be of good character, and not have been convicted of any felony or match-related offense, notwithstanding section 24-5-101, and be appointed as follows:

(I) The governor shall appoint three voting members.

(II) The president of the senate shall appoint one voting member.

(III) The speaker of the house of representatives shall appoint one voting member.

(IV) (A) Two nonvoting advisory members who are licensed physicians shall be appointed, one by the speaker of the house of representatives and one by the president of the senate.

(B) The two nonvoting advisory members shall advise the commission on matters concerning the health and physical condition of boxers and health issues relating to the conduct of matches. The nonvoting members may prepare and submit to the commission for its consideration and approval any rules that in their judgment will safeguard the physical welfare of the participants engaged in boxing.

(b) Members' terms are four years.

(c) The commission shall designate by majority vote which member is to serve as chair. Any member may be removed from office by the person making the appointment for misfeasance, malfeasance, willful neglect of duty, or other cause.

(d) Members shall serve until their successors are appointed and have been qualified. Any vacancy in the membership of the commission shall be filled in the same manner as the original appointment. A vacancy in the membership of the commission other than by expiration of term shall be filled for the remainder of the unexpired term only.

(3) Meetings of the commission shall be held at least annually and shall be called by the chair or by any two members of the commission and shall be open to the public. Any three voting members shall constitute a quorum at any meeting. Action may be taken and motions and resolutions may be adopted at any meeting at which a quorum exists by the affirmative vote of a majority of the voting members present. Members may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all members participating may simultaneously hear one another at all times during the meeting. A member participating in a meeting by this means is deemed to be present in person at the meeting.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 835, § 1, effective October 1.

Editor's note: This section is similar to former § 12-10-105 as it existed prior to 2019.

12-110-107. General powers and duties of the commission - rules. (1) In addition to any other powers specifically granted to the commission in this article 110, the commission shall issue rules as necessary for the regulation of the conduct, promotion, and performance of live boxing matches in this state. The rules must be consistent with this article 110, the federal "Professional Boxing Safety Act of 1996", 15 U.S.C. sec. 6301 et seq., as amended, and any other applicable federal law. The commission's rules must include:

(a) Requirements for issuance of licenses and permits for boxers, seconds, inspectors, promoters, judges, and referees;

(b) Regulation of ticket sales;

(c) Physical requirements for participants, including classification by weight and skill;

(d) Provisions for supervision of contests and exhibitions by referees and licensed physicians;

(e) Requirements for insurance covering participants and bonding of promoters;

(f) Guidelines for compensation of licensees;

(g) Guidelines for contracts and financial arrangements between promoters and participants;

(h) Prohibition of dishonest, unethical, and injurious practices;

(i) Guidelines for reports of fraud;

(j) Responsibilities of participants;

(k) Regulation of facilities; and

(l) Procedures to:

(I) Allow the director to deny or suspend a participant license for a nondisciplinary reason, such as a medical or administrative reason, including the following reasons listed in the federal "Professional Boxing Safety Act of 1996", as amended:

(A) A recent knockout or series of consecutive losses;

(B) An injury;

(C) A required medical procedure; or

(D) A physician's denial of certification;

(II) Authorize the director to lift a license denial or suspension imposed for a nondisciplinary reason if the participant or a representative of the participant sufficiently demonstrates:

(A) That the participant's medical or physical condition has improved to a degree that the nondisciplinary license denial or suspension is no longer warranted; or

(B) That the nondisciplinary license denial or suspension was never warranted; and

(III) Allow the director to report a nondisciplinary participant license suspension to a national record keeper approved by the director.

(2) No member shall receive compensation for serving on the commission; however, a member may be reimbursed for expenses incurred in the performance of services.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 836, § 1, effective October 1.

Editor's note: This section is similar to former § 12-10-106 as it existed prior to 2019.

12-110-108. License required. No person shall participate, officiate, judge, referee, promote, or second a professional boxing arts contest unless the person is licensed pursuant to this article 110.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 837, § 1, effective October 1.

Editor's note: This section is similar to former § 12-10-106.3 as it existed prior to 2019.

12-110-109. Renewal and reinstatement of licenses - fees. All licenses issued pursuant to this article 110 are subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2). Any person whose license has expired shall be subject to the penalties provided in this article 110 or section 12-20-202 (1).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 837, § 1, effective October 1.

Editor's note: This section is similar to former § 12-10-106.5 as it existed prior to 2019.

12-110-110. Office director - appointment - qualification - powers and duties - director of division's powers and duties. (1) The office director is appointed by, and serves under the supervision of, the director of the division.

(2) The office director must:

(a) Be of good character and not have been convicted of any felony or match-related offense, notwithstanding section 24-5-101; and

(b) Not be engaged in any other profession or occupation that could present a conflict of interest with the duties of office director.

(3) (a) In addition to the duties imposed upon the office director elsewhere in this article 110, the office director shall, in accordance with this article 110 and the rules of the commission:

(I) Direct and supervise the administrative and technical activities of the commission;

(II) Supervise and administer the operation of matches; and

(III) As deemed necessary by the director of the division, advise and make recommendations to the director of the division with regard to the director of the division's functions.

(b) In addition to the duties imposed upon the director of the division elsewhere in this article 110, the director of the division shall:

(I) Attend meetings of the commission or appoint a designee to attend in the director of the division's place;

(II) Advise and recommend to the commission rules and other procedures as the director of the division deems necessary and advisable to improve the conduct of boxing;

(III) Furnish any documents of the commission that may be required by the state auditor in the performance of audits performed in conformance with part 1 of article 3 of title 2; and

(IV) Enforce this article 110 and investigate allegations of activity that might violate this article 110.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 837, § 1, effective October 1.

Editor's note: This section is similar to former § 12-10-107 as it existed prior to 2019.

12-110-111. Grounds for discipline. (1) The director may take disciplinary or other action as authorized in section 12-20-404 against a license or an application for a license if the applicant or licensee:

(a) Violates any order of the commission or the director, any provision of this article 110, an applicable provision of article 20 of this title 12, or the rules established under this article 110;

(b) Fails to meet the requirements of this article 110 or the rules of the commission;

(c) Is convicted of or has entered a plea of nolo contendere or guilty to a felony; except that the director shall be governed by the provisions of section 24-5-101 in considering the conviction or plea;

(d) Has a substance use disorder, as defined in section 27-81-102, or is an excessive or a habitual user or abuser of alcohol or habit-forming drugs or is a habitual user of a controlled substance, as defined in section 18-18-102 (5), if the use, disorder, or dependency is a danger to other licensees;

(e) Has incurred disciplinary action related to professional boxing in another jurisdiction. Evidence of disciplinary action is prima facie evidence for denial of a license or other disciplinary action if the violation would be grounds for disciplinary action in this state.

(f) Provides false information in any application or attempts to obtain a license by fraud, deception, misrepresentation, or concealment;

(g) Is guilty of conduct, or is incompetent or negligent in a manner, that:

(I) Is detrimental to a contest or exhibition of boxing, including unsportsmanlike conduct engaged in before, during, or after a contest or exhibition of boxing; or

(II) Results in injury, or creates an unreasonable risk of harm, to a person; or

(h) Fails to comply with a limitation, restriction, or condition that the director or any other state or national regulatory authority responsible for regulating boxing places on the licensee or applicant.

(2) (a) Any proceeding to deny, suspend, revoke, or place on probation a license shall be conducted pursuant to sections 12-20-403, 24-4-104, and 24-4-105.

(b) Upon completing an investigation in accordance with section 12-20-403, the director shall make one of the following findings:

(I) The complaint is without merit and no further action need be taken.

(II) There is no reasonable cause to warrant further action.

(III) The investigation discloses an instance of conduct that does not warrant formal action and should be dismissed, but the director notices indications of possible errant conduct that could lead to serious consequences if not corrected. If this finding is made, the director shall send a confidential letter of concern to the licensee in accordance with section 12-20-404 (5).

(IV) The investigation discloses an instance of conduct that does not warrant formal action but should not be dismissed as being without merit. If this finding is made, the director may send a letter of admonition to the licensee in accordance with section 12-20-404 (4) by certified mail.

(V) The investigation discloses facts that warrant further proceedings by formal complaint. If this finding is made, the director shall refer the complaint to the attorney general for preparation and filing of a formal complaint.

(c) The director shall conduct all proceedings pursuant to this subsection (2) expeditiously and informally so that no licensee is subjected to unfair and unjust charges and that no complainant is deprived of the right to a timely, fair, and proper investigation of a complaint.

(3) The director may issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 838, § 1, effective October 1. **L. 2020:** (1)(d) amended, (SB 20-007), ch. 286, p. 1410, § 29, effective July 13.

Editor's note: This section is similar to former § 12-10-107.1 as it existed prior to 2019.

12-110-112. Toughperson fighting prohibited. (1) Toughperson fighting is prohibited in the state of San Andreas. No person or entity shall promote, advertise, conduct, or compete or participate in toughperson fighting. No license or permit shall be issued for toughperson fighting or for any contests or exhibitions of a similar nature.

(2) Any violation of this section is a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 842, § 1, effective October 1. **L. 2021:** (2) amended, (SB 21-271), ch. 462, p. 3155, § 141, effective March 1, 2022.

Editor's note: This section is similar to former § 12-10-107.5 as it existed prior to 2019.

12-110-113. Immunity. In addition to the persons specified in section 12-20-402, the office director, the office director's staff, any person acting as a witness or consultant to the office director, any witness testifying in a proceeding authorized under this article 110, and any person who lodges a complaint pursuant to this article 110 is granted the same immunity, and is subject to the same conditions for immunity, as specified in section 12-20-402.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 842, § 1, effective October 1.

Editor's note: This section is similar to former § 12-10-108 as it existed prior to 2019.

12-110-114. Fees. The director shall establish and collect nonrefundable license fees and may establish and collect surcharges and other money as the director deems necessary; except that the fees and surcharges shall not exceed the amount necessary to implement this article 110.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 842, § 1, effective October 1.

Editor's note: This section is similar to former § 12-10-109 as it existed prior to 2019.

12-110-115. Violations. (1) **Fines.** The director may issue an order against any person who willfully violates this article 110, after providing prior notice and an opportunity for a hearing pursuant to section 24-4-105. The director may impose a fine in an amount up to five thousand dollars for a single violation or twenty-five thousand dollars for multiple violations in a proceeding or a series of related proceedings.

(2) **Criminal penalties.** Any person who engages in or offers or attempts to engage in the conduct, promotion, or performance of live boxing matches without an active license or permit issued under this article 110 is subject to penalties pursuant to section 12-20-407 (1)(a).

(3) **Injunction.** Whenever it appears to the director that a person has engaged or is about to engage in an act or practice that violates this article 110 or a rule or order issued under this article 110, the director may bring an action to enjoin the acts or practices and to enforce compliance with this article 110 or any rule or order.

(4) **Enforcement.** The commission and director may assist local law enforcement agencies in their investigations of violations of this article 110 and may initiate and carry out such investigations in coordination with local law enforcement agencies.

(5) **Judicial review.** Section 12-20-408 governs final director actions and orders appropriate for judicial review.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 842, § 1, effective October 1.

Editor's note: This section is similar to former § 12-10-110 as it existed prior to 2019.

12-110-116. Repeal of article - subject to review. This article 110 is repealed, effective September 1, 2026. Before the repeal, the office and the commission are scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 843, § 1, effective October 1.

Editor's note: This section is similar to former § 12-10-111 as it existed prior to 2019.

ARTICLE 115

Electricians

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 115 was numbered as article 23 of this title 12 prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

12-115-101. Legislative declaration. The general assembly hereby declares that the state electrical board shall be specifically involved in the testing and licensing of electricians and shall provide for inspections of electrical installations where local inspection authorities are not providing the service to the standards required by this article 115.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 843, § 1, effective October 1.

Editor's note: This section is similar to former § 12-23-100.2 as it existed prior to 2019.

12-115-102. Applicability of common provisions. Articles 1 and 20 of this title 12 apply, according to their terms, to this article 115.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 843, § 1, effective October 1.

12-115-103. Definitions. As used in this article 115, unless the context otherwise requires:

(1) "Apprentice" means a person who is required to be registered as such under section 12-115-115 (3)(a), who is in compliance with the provisions of this article 115, and who is working at the trade in the employment of a registered electrical contractor and is under the direct supervision of a licensed master electrician, journeyman electrician, or residential wireman.

(2) "Board" means the state electrical board created in section 12-115-104.

(2.5) "Direct supervision" means that the supervising licensed master electrician, journeyman electrician, or residential wireman is physically present at the same physical address where the apprentice is working.

(3) "Electric light, heat, and power" means the standard types of electricity that are supplied by an electric utility, regardless of whether the source is an electric utility or the inverter output circuit of a photovoltaic system, direct-current lighting system, or a similar circuit from another type of renewable energy system or electric vehicle charging infrastructure, and used and consumed in a real estate improvement or real estate fixture.

(4) "Electrical contractor" means any person, firm, copartnership, corporation, association, or combination thereof that undertakes or offers to undertake for another the planning, laying out, supervising, and installing or the making of additions, alterations, and repairs in the installation of wiring apparatus and equipment for electric light, heat, and power. A licensed professional engineer who plans or designs electrical installation shall not be classed as an electrical contractor.

(5) "Electrical work" means wiring for, installing, and repairing electrical apparatus and equipment for electric light, heat, and power.

(6) "Journeyman electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, install, and repair electrical apparatus and equipment for electric light, heat, and power, and for other purposes, in accordance with standard rules governing the work.

(7) "Master electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to properly plan, lay out, and supervise the installation and repair of wiring apparatus and equipment for electric light, heat, and power, and for other purposes, in accordance with standard rules governing the work, such as the national electrical code.

(8) "National electrical code" means the code for the safe installation of electrical wiring and equipment, as amended, published by the National Fire Protection Association and approved by the American National Standards Institute, or successor organizations.

(9) "Permanent state highway tunnel facilities" means all permanent state highway tunnels, shafts, ventilation systems, and structures and includes all structures, materials, and equipment appurtenant to the facilities. The term includes all electrical equipment, materials, and systems to be constructed, furnished, and installed as part of the final construction features specified by the applicable contract plans and specifications or by the national electrical code. For the purposes of this article 115 and article 20 of title 34, permanent state highway tunnel facilities shall be deemed to be mines during the construction of the facilities.

(10) "Qualified state institution of higher education" means:

(a) One of the state institutions of higher education established under, specified in, and located upon the campuses described in sections 23-20-101 (1)(a) and 23-31-101, limited to the buildings owned or leased by those institutions on the campuses;

(b) The institution whose campus is established under and specified in section 23-20-101 (1)(b), but limited to the buildings located in Denver at 1380 Lawrence street, 1250 Fourteenth street, and 1475 Lawrence street; and

(c) The institution whose campus is established under and specified in section 23-20-101 (1)(d), but limited to current and future buildings owned, leased, or built on land owned on or before January 1, 2015, by the university of San Andreas on the campus described in section 23-20-101 (1)(d).

(11) "Residential wireman" means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, and install, electrical apparatus and equipment for wiring one-, two-, three-, and four-family dwellings.

(12) "Supervision" means the management of a project to ensure that work on the project is done correctly and according to the law.

(13) "Tiny home" has the meaning set forth in section 24-32-3302 (35).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 843, § 1, effective October 1; (2.5) and (12) added and (3) amended, (SB 19-156), ch. 346, p. 3203, § 10, effective October 1. **L. 2022:** (13) added, (HB 22-1242), ch. 172, p. 1136, § 27, effective August 10.

Editor's note: (1) This section is similar to former § 12-23-101 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-156. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-156, chapter 346, Session Laws of San Andreas 2019.

12-115-104. State electrical board. (1) There is hereby established a state electrical board, which consists of nine members appointed by the governor, with the consent of the senate, who must be residents of the state of San Andreas. The governor shall strongly consider appointing an electrician who works primarily in the residential sector to at least one of the four seats allotted to master or journeyman electricians pursuant to subsection (1)(a) or (1)(b) of this section. The qualifications of the members are as follows:

(a) Two members shall be electrical contractors who have masters' licenses;

(b) Two members shall be master or journeymen electricians who are not electrical contractors;

(c) One member shall be a representative of private, municipal, or cooperative electric utilities rendering electric service to the ultimate public;

(d) One member shall be a building official from a political subdivision of the state performing electrical inspections;

(e) One member shall be a general contractor actively engaged in the building industry; and

(f) Two members shall be appointed from the public at large.

(2) All members of the board shall serve for three-year terms and all appointees shall be limited to two full terms each. Any vacancy occurring in the membership of the board shall be filled by the governor by appointment for the unexpired term of the member. The governor may remove any member of the board for misconduct, incompetence, or neglect of duty.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 845, § 1, effective October 1; IP(1) amended, (SB 19-156), ch. 346, p. 3203, § 11, effective October 1.

Editor's note: (1) This section is similar to former § 12-23-102 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-156. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-156, chapter 346, Session Laws of San Andreas 2019.

12-115-105. Repeal of article - subject to review. This article 115 is repealed, effective September 1, 2032. Before the repeal, the state electrical board, including provisions relating to qualified state institutions of higher education, is scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 845, § 1, effective October 1; entire section amended, (SB 19-156), ch. 346, p. 3204, § 12, effective October 1.

Editor's note: (1) This section is similar to former § 12-23-102.5 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-156. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1,

2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-156, chapter 346, Session Laws of San Andreas 2019.

12-115-106. Board under department of regulatory agencies. The state electrical board is a **type 1** entity, as defined in section 24-1-105. The state electrical board exercises its powers and performs its duties and functions under the department and is allocated to the division.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 846, § 1, effective October 1. **L. 2022:** Entire section amended, (SB 22-162), ch. 469, p. 3393, § 118, effective August 10.

Editor's note: This section is similar to former § 12-23-103 as it existed prior to 2019.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of San Andreas 2022.

12-115-107. Board powers and duties - rules - definition. (1) (a) The board, annually in the month of July, shall elect from its membership a chair and vice-chair. The board shall meet at least annually and at such other times as it deems necessary.

(b) A majority of the board shall constitute a quorum for the transaction of all business.

(2) In addition to all other powers and duties conferred or imposed upon the board by this article 115, the board is authorized to:

(a) (I) Adopt, and from time to time revise, rules pursuant to section 12-20-204. In adopting the rules, the board shall be governed when appropriate by the standards in the most current edition of the national electrical code or by any modifications to the standards made by the board after a hearing is held pursuant to the provisions of article 4 of title 24. These standards are adopted as the minimum standards governing the planning, laying out, and installing or the making of additions, alterations, and repairs in the installation of wiring apparatus and equipment for electric light, heat, and power in this state. A copy of the code shall be kept in the office of the board and open to public inspection. Nothing contained in this section prohibits any city, town, county, city and county, or qualified state institution of higher education from making and enforcing any such standards that are more stringent than the minimum standards adopted by the board, and any city, town, county, city and county, or qualified state institution of higher education that adopts more stringent standards shall furnish a copy thereof to the board. The standards adopted by the board shall be prima facie evidence of minimum approved methods of construction for safety to life and property. The affirmative vote of two-thirds of all appointed members of the board is required to set any standards that are different from those set forth in the national electrical code. If requested in writing, the board shall send a copy of newly adopted standards and rules to any interested party at least thirty days before the implementation and enforcement of the standards or rules. The copies may be furnished for a fee established pursuant to section 12-20-105.

(II) In the event of a conflict between the 2021 international energy conservation code, the 2024 international energy conservation code, the model electric ready and solar ready code

developed by the energy code board pursuant to section 24-38.5-401 (5), or any energy codes adopted by either a local government or divisions in the executive branch of state government and the national electrical code or the standards adopted by the board pursuant to this subsection (2)(a), the national electrical code or the standards adopted by the board pursuant to this subsection (2)(a) prevail.

(b) Register apprentices and register and renew the registration of qualified electrical contractors and examine, license, and renew licenses of journeymen electricians, master electricians, and residential wiremen as provided in this article 115;

(c) Cause the prosecution and enjoinder, in accordance with section 12-20-406, of all persons violating this article 115 and incur necessary expenses therefor;

(d) Inspect and approve or disapprove the installation of electrical wiring, renewable energy systems, apparatus, or equipment for electric light, heat, and power according to the minimum standards in the national electrical code or as prescribed in this article 115. With respect to:

(I) An inverter-based hydroelectric energy facility generating one hundred kilowatts or less, regardless of whether the facility is connected to utility or other distribution lines, an inspector shall inspect a hydroelectric energy installation in accordance with the minimum standards set forth in the edition of the national electrical code in effect on May 29, 2015; however, if a micro hydro assembly manufactured for the purpose of generating electricity in a micro hydro system uses an inverter that is listed and identified for interconnection service, the inspector shall deem the system's equipment compliant with section 705.4 of the edition of the national electrical code in effect on May 29, 2015. For purposes of this subsection (2)(d), a "micro hydro system" means a hydroelectric generation system that generates one hundred kilowatts or less.

(II) An induction-based hydroelectric energy facility generating one hundred kilowatts or less, regardless of whether the facility is connected to utility or other distribution lines, the installation of a hydroelectric energy turbine, induction generator, and control panel shall be certified:

(A) To a listing standard by a field evaluation body or nationally recognized testing laboratory; or

(B) By a professional engineer, by means of signing and stamping documentation of the project, as required in a form and manner determined by the board, indicating that the installation meets design criteria set forth in the Institute of Electrical and Electronics Engineers' (IEEE) standard for interconnecting distributed resources with electric power systems.

(e) Apply any hydroelectric energy provisions of an updated national electrical code, notwithstanding any provision in subsection (2)(d) of this section to the contrary, if the national electrical code is updated to address hydroelectric energy specifically;

(f) Regulate a licensed master electrician, journeyman electrician, or residential wireman who, acting within his or her scope of competence, supervises a solar photovoltaic installation pursuant to section 40-2-128. On and after January 1, 2020, all photovoltaic electrical work for installations of at least three hundred kilowatts, including the interconnection of the modules, grounding of the modules, any balance of system wiring, and the customer-side point of connection to the utility grid, must be performed by a licensed master electrician, licensed journeyman electrician, licensed residential wireman, or properly supervised electrical

apprentices and must comply with all applicable requirements of this article 115, including sections 12-115-109 and 12-115-115, and all applicable rules of the board.

(g) Review and approve or disapprove requests for exceptions to the national electrical code in unique construction situations where a strict interpretation of the code would result in unreasonable operational conditions or unreasonable economic burdens, as long as public safety is not compromised;

(h) Conduct investigations and hearings and gather evidence in accordance with the provisions of sections 12-20-403 and 24-4-105;

(i) Enter into reciprocal licensing agreements with the electrical board, or its equivalent, of another state or states where the qualifications for electrical licensing are substantially equivalent to licensure requirements in San Andreas;

(j) Find, upon holding a hearing, that an incorporated town or city, county, city and county, or qualified state institution of higher education fails to meet the minimum requirements of this article 115 if the local inspection authority, including a qualified state institution of higher education, has failed to adopt or adhere to the minimum standards required by this article 115 within twelve months after the board has adopted the standards by rule pursuant to this subsection (2);

(k) Issue an order to cease and desist from issuing permits or performing inspections under this article 115 to an incorporated town or city, county, city and county, or qualified state institution of higher education upon finding that the public entity or qualified state institution of higher education fails to meet the minimum requirements of this article 115 pursuant to subsection (2)(j) of this section;

(l) Apply to a court to enjoin an incorporated town or city, county, city and county, or qualified state institution of higher education from violating an order issued pursuant to subsection (2)(k) of this section.

(3) (a) No later than September 1, 2023, the board shall promulgate rules requiring that, to obtain an electrical permit under this article 115 on or after March 1, 2024, a permit applicant must comply with the EV power transfer infrastructure requirements for multifamily buildings in the model electric ready and solar ready code.

(b) (I) If the rules adopted in accordance with this subsection (3) conflict with a provision of the building or zoning code, the rules prevail unless the provision provides for greater access to parking supplied by EV power transfer infrastructure than is required by the rules.

(II) If a provision of a local building or zoning code prevents a project or development from complying with the rules adopted in accordance with this subsection (3), then the rules prevail.

(c) (I) This subsection (3) applies to electrical permits for new construction of or for major renovations of multifamily buildings that must comply with the EV power transfer infrastructure requirements of the model electric ready and solar ready code.

(II) The board and the department shall not enforce the rules promulgated under subsection (3)(a) of this section before March 1, 2024.

(III) If an electrical permit application is submitted to a local electrical inspection authority before the enforcement date in subsection (3)(c)(II) of this section but an electrical permit has not yet been issued, the local electrical inspection authority may determine how to

apply the requirements of the rules developed in accordance with subsection (3)(a) of this section.

(IV) If a site development plan application is submitted to a local government and has been approved by March 1, 2024, the local government may determine how to apply the requirements of the rules developed in accordance with subsection (3)(a) of this section.

(d) (I) In promulgating the rules required under subsection (3)(a) of this section, the board shall ensure all requirements adopted in the rules are in compliance with the requirements of the national electrical code, as amended under subsection (2)(a)(I) of this section.

(II) Within ninety days after any update made by the energy code board to the EV power transfer infrastructure requirements for multifamily housing in the model electric ready and solar ready code, the board shall update the rules promulgated under subsection (3)(a) of this section with the same changes. The board shall not enforce the updated rules until two hundred seventy days after the updated rules are adopted.

(III) The rules promulgated under subsection (3)(a) of this section do not supersede or preempt the safety requirements of other building codes, whether promulgated by an agency of the state of San Andreas or of a local government.

(e) Any installations or upgrades performed in accordance with the rules promulgated under this subsection (3) on the load side of the utility meter must comply with this article 115, including subsection (2)(a) of this section, which requires compliance with the national electrical code, and sections 12-115-109 and 12-115-115, and all rules of the board.

(f) For all electric vehicle infrastructure or charging stations owned by an electric utility, the utility shall comply with section 40-5-107 (3)(b).

(g) As used in this subsection (3) and in subsection (4) of this section:

(I) "Electric vehicle charging system" has the meaning set forth in section 38-12-601 (6)(a).

(II) "EV power transfer infrastructure" means any system that is used to charge electric vehicles and that is addressed in or required by the model electric ready and solar ready code.

(III) "Major renovations" means renovations that change a minimum of fifty percent or more of the parking area.

(IV) "Model electric ready and solar ready code" means the code developed by the energy code board under section 24-38.5-401 (5)(a) to make buildings electric ready as specified in section 24-38.5-401 (5)(b).

(4) (a) Notwithstanding any authority granted to the board by this section, the board shall not promulgate rules prohibiting the installation of electric vehicle charging systems unless the rules are narrowly drafted to address a bona fide safety concern.

(b) Any rule promulgated by the board that prohibits the installation of electric vehicle charging systems is subject to judicial review as authorized in article 4 of title 24.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 846, § 1, effective October 1; (2)(f) amended, (HB 19-1003), ch. 360, p. 3339, § 4, effective October 1. **L. 2022:** (2)(a) amended, (HB 22-1362), ch. 301, p. 2178, § 2, effective June 2. **L. 2023:** (3) and (4) added, (HB 23-1233), ch. 245, p. 1317, § 2, effective May 23.

Editor's note: (1) This section is similar to former § 12-23-104 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in HB 19-1003. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see HB 19-1003, chapter 360, Session Laws of San Andreas 2019.

Cross references: For the legislative declaration in HB 23-1233, see section 1 of chapter 245, Session Laws of San Andreas 2023.

12-115-108. Program director. The director of the division may appoint a program director pursuant to section 13 of article XII of the state constitution to work with the board in carrying out its duties under this article 115.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 848, § 1, effective October 1.

Editor's note: This section is similar to former § 12-23-104.5 as it existed prior to 2019.

12-115-109. Electrician must have license - control and supervision. (1) No person shall engage in or work at the business, trade, or calling of a journeyman electrician, master electrician, or residential wireman in this state until the person has received a license from the division upon written notice from the board or the program director, acting as the agent thereof, or a temporary permit from the board, the program director, or agent of the director.

(2) A residential wireman shall not perform electrical work of a type that is beyond the authorization of the license held.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 849, § 1, effective October 1.

Editor's note: This section is similar to former § 12-23-105 as it existed prior to 2019.

12-115-110. License requirements - rules - continuing education. (1) **Master electrician.** (a) An applicant for a master electrician's license shall furnish written evidence that:

(I) The applicant is a graduate electrical engineer of an accredited college or university and has one year of practical electrical experience in the construction industry;

(II) The applicant is a graduate of an electrical trade school or community college and has at least four years of practical experience in electrical work; or

(III) The applicant has had at least one year of practical experience in planning, laying out, supervising, and installing wiring, apparatus, or equipment for electric light, heat, and power beyond the practical experience requirements for the journeyman's license.

(b) Each applicant for a license as a master electrician must file an application on forms prepared and furnished by the board, together with the application fee provided in section 12-115-117 (1). The board shall notify each applicant that the evidence submitted with the application is sufficient to qualify the applicant for licensure or that the evidence is insufficient and the application is rejected. If the application is rejected, the board shall set forth the reasons for the rejection in the notice to the applicant.

(2) **Journeyman electrician.** (a) An applicant for a journeyman electrician's license shall furnish written evidence that the applicant has had the following:

(I) At least four years' apprenticeship in the electrical trade or four years' practical experience in wiring for, installing, and repairing electrical apparatus and equipment for electric light, heat, and power;

(II) At least two of the applicant's years' experience required by subsection (2)(a)(I) of this section has been in commercial, industrial, or substantially similar work; and

(III) Effective January 1, 2011, during the last four years of training, apprenticeship, or practical experience in wiring for, installing, and repairing electrical apparatus and equipment for electric light, heat, and power, at least two hundred eighty-eight hours of training in safety, the national electrical code and its applications, and any other training required by the board that is provided by an accredited college or university, an established industry training program, or any other provider whose training is conducted in compliance with rules promulgated by the board, in collaboration with established industry training programs and industry representatives.

(b) An applicant shall be permitted to substitute for required practical experience evidence of academic training or practical experience in the electrical field, which shall be credited as follows:

(I) If the applicant is a graduate electrical engineer of an accredited college or university or the graduate of a community college or trade school program approved by the board, the applicant shall receive one year of work experience credit.

(II) If the applicant has academic training, including military training, that does not qualify under subsection (2)(b)(I) of this section, the board shall provide work experience credit for the training or for substantially similar training established by rule.

(c) Any application for a license and notice to the applicant shall be made and given as provided for in the case of a master electrician's license.

(3) **Residential wireman.** (a) An applicant for a residential wireman's license shall furnish written evidence that the applicant has at least two years of accredited training or two years of practical experience in wiring one-, two-, three-, and four-family dwellings.

(b) An applicant shall be permitted to substitute for required practical experience evidence of academic training in the electrical field, which shall be credited as follows:

(I) If the applicant is a graduate electrical engineer of an accredited college or university or the graduate of a community college or trade school program approved by the board, the applicant shall receive one year of work experience credit.

(II) If the applicant has academic training, including military training, that is not sufficient to qualify under subsection (3)(b)(I) of this section, the board shall provide work experience credit for the training according to a uniform ratio established by rule.

(c) Any residential wireman's license issued under this section shall be clearly marked as such across its face.

(4) (a) The board shall provide for licensing examinations. Any examination that is given for master electricians, journeymen electricians, and residential wiremen shall be subject to board approval. The board, or its designee, shall conduct and grade the examination and shall set the passing score to reflect a minimum level of competency. If it is determined that the applicant has passed the examination, the division, upon written notice from the board or the program director, acting as an agent thereof, and upon payment by the applicant of the fee provided in section 12-115-117, shall issue to the applicant a license that authorizes him or her to

engage in the business, trade, or calling of a master electrician, journeyman electrician, or residential wireman.

(b) All license and registration expiration and renewal schedules shall be in accord with the provisions of section 12-20-202. Fees in regard to such renewals shall be those set forth in section 12-115-117.

(c) Licenses issued pursuant to this article 115 are subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2). Any person whose license has expired shall be subject to the penalties provided in this article 115 or section 12-20-202 (1).

(d) (I) (A) Except as otherwise provided in subsection (4)(d)(I)(B) of this section, on or after January 1, 2018, the department shall not renew or reinstate a license unless the applicant has completed twenty-four hours of continuing education since the date of issuance of the applicant's initial license or, if the applicant's license was renewed or reinstated, the most recent renewal or reinstatement.

(B) Subsection (4)(d)(I)(A) of this section does not apply to the first renewal or reinstatement of a license for which, as a condition of issuance, the applicant successfully completed a licensing examination pursuant to subsection (4)(a) of this section.

(II) On or before April 1, 2017, the board, in collaboration with established industry training programs and industry representatives, shall adopt rules establishing continuing education requirements and standards, which requirements and standards must include course work related to the national electrical code, including core competencies as determined by the board. A renewal or reinstatement license applicant shall furnish or cause to be furnished to the board, in a form and manner required by the board, documentation to demonstrate compliance with this subsection (4)(d)(II) and rules promulgated pursuant to this subsection (4)(d)(II). To ensure consumer protection, the board's rules may include audit standards for licensee compliance with continuing education requirements and requirements pertaining to the testing of licensees by the continuing education vendor.

(5) (a) No person, firm, copartnership, association, or combination thereof shall engage in the business of an electrical contractor without having first registered with the board. The board shall register the contractor upon payment of the fee as provided in section 12-115-117, presentation of evidence that the applicant has complied with the applicable workers' compensation and unemployment compensation laws of this state, and satisfaction of the requirements of subsection (5)(b) or (5)(c) of this section.

(b) If either the owner or the part owner of any firm, copartnership, corporation, association, or combination thereof has been issued a master electrician's license by the division and is in charge of the supervision of all electrical work performed by the contractor, upon written notice from the board or the program director, acting as the agent thereof, the division shall promptly, upon payment of the fee as provided in section 12-115-117, register the licensee as an electrical contractor.

(c) If any person, firm, copartnership, corporation, association, or combination thereof engages in the business of an electrical contractor and does not comply with subsection (5)(b) of this section, it shall employ at least one licensed master electrician, who shall be in charge of the supervision of all electrical work performed by the contractor.

(d) No holder of a master's license shall be named as the master electrician, under subsection (5)(b) or (5)(c) of this section, for more than one contractor, and a master name shall

be actively engaged in a full-time capacity with that contracting company. The qualifying master license holder shall be required to notify the board within fifteen days after his or her termination as a qualifying master license holder. The master license holder is responsible for all electrical work performed by the electrical contracting company. Failure to comply with a notification may lead to discipline of the master license holder as provided in section 12-115-122.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 849, § 1, effective October 1; (1)(b) amended, (SB 19-156), ch. 346, p. 3204, § 13, effective October 1.

Editor's note: (1) This section is similar to former § 12-23-106 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-156. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-156, chapter 346, Session Laws of San Andreas 2019.

12-115-111. Credit for experience not subject to supervision of a licensed electrician. For all applicants seeking work experience credit toward licensure, the board shall give credit for electrical work that is not required to be performed by or under the supervision of a licensed electrician if the applicant can show that the particular experience received or the supervision under which the work has been performed is adequate.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 852, § 1, effective October 1.

Editor's note: This section is similar to former § 12-23-106.5 as it existed prior to 2019.

12-115-112. Unauthorized use of title. No person, firm, partnership, corporation, or association shall advertise in any manner or use the title or designation of "master electrician", "journeyman electrician", or "residential wireman" unless qualified and licensed under this article 115.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 852, § 1, effective October 1.

Editor's note: This section is similar to former § 12-23-107 as it existed prior to 2019.

12-115-113. License by endorsement or reciprocity - rules. (1) The board shall issue an electrical license by endorsement in this state to any person who is licensed to practice in another jurisdiction if the person presents proof satisfactory to the board that, at the time of application for a San Andreas license by endorsement, the person possesses credentials and qualifications that are substantially equivalent to requirements in San Andreas for licensure.

(2) The board shall issue an electrical license by reciprocity where a reciprocal agreement for an equivalent license exists, pursuant to section 12-115-107 (2)(i), between the board and the electrical board, or its equivalent, of the state or states where the applicant is

licensed. The board shall strive to reduce barriers for San Andreas licensees to be licensed by endorsement or through reciprocity in other states.

(3) The board may specify by rule what shall constitute substantially equivalent credentials and qualifications.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 852, § 1, effective October 1.

Editor's note: This section is similar to former § 12-23-109 as it existed prior to 2019.

12-115-114. Temporary permits - rules. The board or the program director or the director's agent, as provided in the rules promulgated by the board, shall issue temporary permits to engage in the work of a master electrician in cases where an electrical contractor no longer has the services of any master electrician as required under this article 115 and shall issue temporary permits to engage in the work of a journeyman electrician or residential wireman to any applicant who furnishes evidence satisfactory to the board that the applicant has the required experience to qualify for the examination provided in this article 115 and who pays the fee provided in section 12-115-117 for the permits. In addition, and in a similar manner, the board or the program director or the director's agent shall issue temporary permits to any applicant who furnishes evidence satisfactory to the board that the applicant qualifies for a master electrician's license and who pays the required fee. Temporary permits shall continue in effect for no more than thirty days after issuance and may be revoked by the board at any time.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 853, § 1, effective October 1.

Editor's note: This section is similar to former § 12-23-110 as it existed prior to 2019.

12-115-115. Apprentices - supervision - registration - discipline - rules. (1) Any person may work as an apprentice but shall not do any electrical wiring for the installation of electrical apparatus or equipment for light, heat, or power except under the direct supervision of a licensed electrician. A licensed electrician shall not directly supervise more than three apprentices at a job site.

(2) An electrical contractor, journeyman electrician, master electrician, or residential wireman who is the employer or direct supervisor of any electrical apprentice working at the trade is responsible for the work performed by the apprentice. The board may take disciplinary action against the contractor, electrician, or residential wireman under section 12-115-122 for any improper work performed by an electrical apprentice working at the trade while employed by and under the direct supervision of that person. The registration of the apprentice may also be subject to disciplinary action under section 12-115-122.

(3) (a) Upon employing an apprentice to work at the trade, the electrical contractor, within thirty days after the initial employment, shall register the apprentice with the board. The employer shall also remove each apprentice that is no longer employed as an apprentice from the apprenticeship program and annually notify the board of the termination of the employment.

(b) An apprentice must be under the direct supervision of a licensed electrician as set forth in subsection (1) of this section.

(c) By January 1 each year, an electrical contractor, an apprenticeship program registered with the United States department of labor's office of apprenticeship, and a state apprenticeship agency recognized by the United States department of labor that employs an apprentice in this state shall report to the board the name and contact information of each apprentice in the apprenticeship program and the cumulative number of practical training hours and certified classroom hours each apprentice has completed toward the journeyman electrician licensure requirements specified in section 12-115-110. The board shall keep the information reported pursuant to this subsection (3)(c) confidential from all parties other than from the apprentice through the apprentice's individual registration account. The department of regulatory agencies shall, if existing resources are available or if the department receives gifts, grants, or donations pursuant to subsection (7) of this section, indicate whether the apprentice has completed the required practical training hours and classroom hours in the department of regulatory agency's online apprenticeship directory.

(4) On and after January 1, 2021, contingent on the availability of existing resources within the department or the receipt of gifts, grants, and donations pursuant to subsection (7) of this section:

(a) (I) An apprentice who has been registered for at least six years, has completed eight thousand hours of practical training, and meets all other journeyman electrician license requirements specified in section 12-115-110 shall take the journeyman electrician license examination at least every three years in alignment with the license renewal cycle until the apprentice receives a passing score.

(II) If an apprentice has failed to pass the license examination in two consecutive three-year periods, the apprentice may request an exemption from the board from future examination requirements. The board shall grant the exemption if the board determines that the apprentice has legitimate educational or professional circumstances that justify the exemption. The board shall promulgate rules concerning the process of requesting and approving license examination exemptions.

(b) An apprentice who has been registered for at least six years and who does not meet the journeyman electrician license requirements specified in section 12-115-110 shall take the journeyman electrician license examination at least once every three years in alignment with the license renewal cycle until the apprentice receives a passing score. Once the apprentice passes the license examination, the apprentice must meet all other journeyman electrician license requirements specified in section 12-115-110 before the board may issue a journeyman electrician license to the apprentice.

(5) (a) If the cumulative training and classroom hours of an apprentice are not reported as required by subsection (3)(c) of this section or if an apprentice fails to take the license examination as required by subsection (4) of this section, the board may suspend the apprentice's registration until the requirements are met.

(b) If an apprentice who is required to take the license examination pursuant to subsection (4) of this section has a learning disability, the apprentice, electrical contractor, or apprenticeship program may request that the board make accommodations for the apprentice to take the examination with the appropriate level of support.

(6) Repealed.

(7) The department may seek, accept, and expend gifts, grants, or donations from private or public sources for the purposes of this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 853, § 1, effective October 1; (1), (2), and (3)(b) amended, (SB 19-156), ch. 346, p. 3204, § 14, effective October 1. **L. 2020:** (3)(a) amended and (3)(c) and (4) to (7) added, (SB 20-120), ch. 244, p. 1171, § 1, effective September 14. **L. 2023:** (3)(c) amended, (SB 23-051), ch. 37, p. 144, § 16, effective March 23.

Editor's note: (1) This section is similar to former § 12-23-110.5 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-156. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-156, chapter 346, Session Laws of San Andreas 2019.

(3) Subsection (6)(b) provided for the repeal of subsection (6), effective July 1, 2021. (See L. 2020, p. 1173.)

12-115-116. Exemptions - definition. (1) Employees of public service corporations, rural electrification associations, or municipal utilities generating, distributing, or selling electrical energy for light, heat, or power or for operating street railway systems, or telephone or telegraph systems, or their corporate affiliates and their employees or employees of railroad corporations, or lawfully permitted or franchised cable television companies and their employees shall not be required to hold licenses while doing electrical work for those purposes.

(2) Nothing in this article 115 shall be construed to require any individual to hold a license before doing electrical work on his or her own property or residence if all such electrical work, except for maintenance or repair of existing facilities, is inspected as provided in this article 115; if, however, the property or residence is intended for sale or resale by a person engaged in the business of constructing or remodeling the facilities or structures or is rental property that is occupied or is to be occupied by tenants for lodging, either transient or permanent, or is generally open to the public, the owner shall be responsible for, and the property shall be subject to, all of the provisions of this article 115 pertaining to inspection and licensing, unless specifically exempted therein.

(3) (a) Nothing in this article 115 requires a regular employee of a firm or corporation to hold a license before doing any electrical work on the property of the firm or corporation, whether or not the property is owned, leased, or rented if:

(I) The firm or corporation employing the employee performing the work has all the electrical work installed in conformity with the minimum standards as set forth in this article 115;

(II) The work is subject to inspection by the board or its inspectors by request in writing in accordance with section 12-115-120; and

(III) The property of the firm or corporation is not generally open to the public.

(b) Neither a license for the firm or corporation, nor an inspection by the board or its inspectors, nor the payment of any fees thereon shall be required, with the exception of inspection by the board or its inspectors when performed by written request. Nothing contained

in this article 115 requires a license, an inspection by the board or its inspectors, or the payment of any fees for any electrical work performed for the maintenance or repair of existing facilities that are exempt as provided in this section.

(4) If the property of any person, firm, or corporation is: Rental property or is developed for sale, lease, or rental; occupied or is to be occupied by tenants for lodging, either transient or permanent; or generally open to the public, the property is subject to all the provisions of this article 115 pertaining to inspection and licensing; except that the maintenance or repair of existing property specified in this subsection (4) is not subject to this article 115.

(5) Nothing in this article 115 shall be construed to cover the installation, maintenance, repair, or alteration of vertical transportation or passenger conveyors, elevators, escalators, moving walks, dumbwaiters, stage lifts, man lifts, or appurtenances thereto beyond the terminals of the controllers. Furthermore, elevator contractors or constructors performing any installation, maintenance, repair, or alteration under this exemption, or their employees, shall not be covered by the licensing requirements of this article 115.

(6) (a) Nothing in this article 115 shall be construed to require an individual to hold a license before doing any maintenance or repair of existing facilities on his or her own property or residence, nor to require inspection by the board or its inspectors, nor to pay any fees connected therewith.

(b) Nothing in this article 115 shall be construed to require any firm or corporation or its regular employees to be required to hold a license before doing maintenance or repair of existing facilities on the property of the firm or corporation, whether or not the property is generally open to the public; nor shall inspection by the board or its inspectors or the payment of any fees connected therewith be required.

(c) For the purposes of this subsection (6), "maintenance or repair of existing facilities" means to preserve or keep in good repair lawfully installed facilities by repairing or replacing components with new components that serve the same purpose.

(7) An individual, firm, copartnership, or corporation may engage in business as an electrical contractor without an electrician's license if all electrical work performed by the individual, firm, copartnership, or corporation is under the direction and control of a licensed master electrician.

(8) Any person who plugs in any electrical appliance where an approved electrical outlet is already installed shall not be considered an installer.

(9) No provision of this article 115 shall in any manner interfere with, hamper, preclude, or prohibit any vendor of any electrical appliance from selling, delivering, and connecting any electrical appliance, if the connection of the appliance does not necessitate the installation of electrical wiring of the structure where the appliance is connected.

(10) The provisions of this article 115 shall not be applicable to the installation or laying of metal or plastic electrical conduits in bridge or highway projects where the conduits must be laid according to specifications complying with applicable electrical codes.

(11) Repealed.

(12) Inasmuch as electrical licensing and the examination of persons performing electrical work is a matter of statewide concern, the examination, certification, licensing, or registration of electrical contractors, master electricians, journeymen electricians, residential wiremen, or apprentices who are licensed, registered, or certified under this article 115 shall not be required by any city, town, county, city and county, or qualified state institution of higher

education; however, any such local governmental authority or qualified state institution of higher education may impose reasonable registration requirements on any electrical contractor as a condition of performing services within the jurisdiction of the authority or within buildings owned or leased or on land owned by the qualified state institution of higher education. No fee shall be charged for the registration.

(13) The provisions of this article 115 shall not be applicable to any surface or subsurface operation or property used in, around, or in conjunction with any mine that is inspected pursuant to the "Federal Mine Safety and Health Amendments Act of 1977", Pub.L. 95-164, as amended, except permanent state highway tunnel facilities, which shall conform to standards based on the national electrical code. Nothing contained in this subsection (13) shall prohibit the department of transportation from adopting more stringent standards or requirements than those provided by the minimum standards specified in the national electrical code, and the department of transportation shall furnish a copy of the more stringent standards to the board.

(14) (a) The permit and inspection provisions of this article 115 do not apply to:

(I) Installations under the exclusive control of electric utilities for the purpose of communication or metering or for the generation, control, transformation, transmission, or distribution of electric energy, whether the installations are located in buildings used exclusively for utilities for those purposes or located outdoors on property owned or leased by the utility or on public highways, streets, or roads or outdoors by virtue of established rights on private property; or

(II) Load control devices for electrical hot water heaters that are owned, leased, or otherwise under the control of, and are operated by, an electric utility, and are on the load side of the single-family residential meter, if the equipment was installed by a registered electrical contractor. The contractor will notify appropriate local authorities that the work has been completed in order that an inspection may be made at the expense of the utility company.

(b) This subsection (14) does not exempt any premises wiring on buildings, structures, or other premises not owned by or under the exclusive control of the utility nor wiring in buildings used by the utility for purposes other than those listed in this subsection (14), such as office buildings, garages, warehouses, machine shops, and recreation buildings. This subsection (14) exempts all of the facilities, buildings, and the like inside the security fence of a generating station, substation, control center, or communication facility.

(15) Nothing in this article 115 shall be construed to:

(a) Cover the installation, maintenance, repair, or alteration of security systems of fifty volts or less, lawn sprinkler systems, environmental controls, or remote radio-controlled systems beyond the terminals of the controllers. Furthermore, the contractors performing any installation, maintenance, repair, or alteration under this exemption, or their employees, shall not be covered by the licensing requirements of this article 115.

(b) Cover the installation, maintenance, repair, or alteration of electronic computer data processing equipment and systems beyond the terminals of the controllers. Furthermore, the contractors performing any installation, maintenance, repair, or alteration under this exemption, or their employees, shall not be covered by the licensing requirements of this article 115.

(c) (I) Except to the extent that a communication system's cables and systems utilized for conveying power are hard-wired into a building's electrical system but subject to subsection (16)(a) of this section, cover the installation, maintenance, repair, or alteration of communications systems, including:

(A) Telephone and telegraph systems not exempted as utilities in subsection (1) of this section;

(B) Radio and television receiving and transmitting equipment and stations; and

(C) Antenna systems other than community antenna television systems beyond the terminals of the controllers.

(II) The contractors performing any installation, maintenance, repair, or alteration under the exemption specified in this subsection (15)(c) and their employees are not covered by the licensing requirements of this article 115.

(d) Cover the installation, maintenance, repair, or alteration of electric signs, cranes, hoists, electroplating, industrial machinery, and irrigation machinery beyond the terminals of the controllers. Furthermore, the contractors performing any installation, maintenance, repair, or alteration under this exemption, or their employees, shall not be covered by the licensing requirements of this article 115.

(e) Cover the installation, maintenance, repair, or alteration of equipment and wiring for sound recording and reproduction systems, centralized distribution of sound systems, public address and speech-input systems, or electronic organs beyond the terminals of the controllers. Furthermore, the contractors performing any installation, maintenance, repair, or alteration under this exemption, or their employees, shall not be covered by the licensing requirements of this article 115.

(f) Require either that employees of the federal government who perform electrical work on federal property shall be required to be licensed before doing electrical work on the property or that the electrical work performed on the property shall be regulated pursuant to this article 115;

(g) Require licensing that covers the installation, maintenance, repair, or alteration of fire alarm systems operating at fifty volts or less. Furthermore, the contractors performing any installation, maintenance, repair, or alteration under this exemption, or their employees, shall not be covered by the licensing requirements of this article 115 but shall be subject to all provisions of this article 115 pertaining to inspections and permitting.

(16) Nothing in this article 115 applies to:

(a) (I) The installation, maintenance, repair, or alteration of class 2 and class 3 remote-control, signaling, and power-limited circuits, as defined by the national electrical code; or

(II) Contractors or their employees performing any installation, maintenance, repair, or alteration of the circuits specified in subsection (16)(a)(I) of this section; or

(b) The installation, maintenance, repair, or alteration of traffic signals or requires licensure for that work.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 854, § 1, effective October 1; (3), (4), IP(14)(a), (14)(a)(II), and (15)(c) amended, (11) repealed, and (16) added, (SB 19-156), ch. 346, p. 3204, § 15, effective October 1.

Editor's note: (1) This section is similar to former § 12-23-111 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-156. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1,

2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-156, chapter 346, Session Laws of San Andreas 2019.

12-115-117. Fees. (1) As established pursuant to section 12-20-105, fees shall be charged by the board for the following:

(a) Master electrician's license or permit;
(b) Renewal of master electrician's license;
(c) Journeyman electrician's license or permit;
(d) Renewal of journeyman electrician's license;
(e) Examination for master electrician;
(f) Examination for journeyman electrician;
(g) Electrical contractor registration;
(h) Renewal of electrical contractor registration;
(i) Residential wireman's license or permit;
(j) Renewal of residential wireman's license;
(k) Examination for residential wireman;
(l) Apprentice registration.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 858, § 1, effective October 1.

Editor's note: This section is similar to former § 12-23-112 as it existed prior to 2019.

12-115-118. Publications. Publications of the board circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 858, § 1, effective October 1.

Editor's note: This section is similar to former § 12-23-114 as it existed prior to 2019.

12-115-119. Inspectors - qualifications - enforcement of licensing and apprentice-supervision-ratio requirements - rules - legislative declaration - definitions. (1) (a) (I) The director of the division is hereby authorized to appoint or employ, with the power of removal, competent persons licensed under this article 115 as journeymen or master electricians as state electrical inspectors. The director is also authorized to appoint or employ, with the power of removal, for the purpose of inspecting one-, two-, three-, or four-family dwellings, competent persons with the following qualifications:

(A) Persons who have passed the written residential wireman's examination described in section 12-115-110.

(B) Repealed.

(I.5) For purposes of conducting compliance checks specified in subsection (3) of this section, the director shall appoint or employ two individuals to conduct the compliance checks. The director may appoint or employ individuals who are licensed under this article 115 or may appoint or employ individuals who are not licensed under this article 115 but who demonstrate

substantial prior work experience in the electrical or construction industry. Individuals appointed or employed pursuant to this subsection (1)(a)(I.5) shall limit their activities to conducting compliance checks of matters specified in said subsection (3).

(II) State electrical inspectors and individuals performing compliance checks pursuant to subsection (3) of this section may be employed either on a full-time or on a part-time basis as the circumstances in each case warrant; except that the director may contract with any electrical inspector regularly engaged as such and certify the electrical inspector to make inspections in a designated area at such compensation as fixed by the director. State electrical inspectors and individuals performing compliance checks pursuant to subsection (3) of this section have the right of ingress and egress to and from all public and private premises during reasonable working hours where this article 115 applies for the purpose of making electrical inspections, conducting compliance checks pursuant to subsection (3) of this section, or otherwise determining compliance with this article 115. In order to avoid conflicts of interest, a state electrical inspector hired under this section shall not inspect any electrical work in which the inspector has any financial or other personal interest and shall not engage in the electrical business by contracting, supplying material, or performing electrical work.

(b) Any employee of a private, municipal, or cooperative electric utility rendering service to the ultimate public shall be prohibited from employment as an electrical inspector only when in the performance of any electrical work as defined in this article 115. Electrical inspectors performing electrical inspections who are employed by any city, town, county, city and county, or qualified state institution of higher education shall possess the same qualifications required of state electrical inspectors under this section; shall be registered with the board prior to the assumption of their duties; shall not inspect any electrical work in which the inspector has any financial or other personal interest; and shall not be engaged, within the jurisdiction employing the inspector, in the electrical business by contracting, supplying material, or performing electrical work as defined in this article 115. Additionally, electrical inspectors performing electrical inspections who are employed by a qualified state institution of higher education shall possess an active journeyman or master electrician license. A supervisor overseeing the work of an electrical inspector who is employed by a qualified state institution of higher education shall not direct the electrical inspector to violate any provision of this article 115. An electrical inspector employed by a qualified state institution of higher education shall not be coerced by a supervisor when filing a complaint with the board or when the electrical inspector disapproves an electrical installation that violates the provisions of this article 115.

(c) Nothing in this article 115 shall be construed to limit any inspector from qualifying as an inspector in other construction specialties.

(2) (a) State electrical inspectors appointed or employed pursuant to subsection (1) of this section may:

(I) Conduct inspections and investigations pursuant to section 12-115-122 (2) on behalf of the program director; and

(II) Provide service of process for a citation served pursuant to section 12-115-122 (4)(b) in compliance with rule 4 of the San Andreas rules of civil procedure.

(b) Individuals appointed or employed pursuant to subsection (1)(a)(I.5) of this section who are not licensed master or journeyman electricians but who demonstrate substantial prior work experience in the electrical or construction industry may conduct compliance checks pursuant to subsection (3) of this section.

(3) (a) The general assembly finds and declares that it is a matter of statewide concern to protect public safety and health by ensuring that individuals who perform electrical work have the skills necessary to perform the work. The general assembly therefore determines that board enforcement of the licensing requirements in this article 115 and the limits on the number of apprentices a licensed electrician is permitted to supervise specified in section 12-115-115 (1) is essential to protect public safety and health.

(b) The board shall direct individuals appointed or employed pursuant to subsection (1)(a)(I.5) of this section to:

(I) Conduct compliance checks to ensure compliance with the licensing and supervisor-to-apprentice ratio requirements specified in this article 115 on projects throughout the state where electrical work is being performed, regardless of whether the permit for the electrical work was issued by the board, an incorporated town or city, a county, a city and county, or a qualified state institution of higher education; and

(II) Prioritize for compliance checks projects that provide or will provide critical services to residents of the state.

(c) To ensure compliance with the licensing and supervisor-to-apprentice ratio requirements pursuant to subsection (3)(b)(I) of this section, individuals appointed or employed pursuant to subsection (1)(a)(I.5) of this section shall conduct compliance checks at projects throughout the state where electrical work is being performed to ensure that:

(I) The individual performing the electrical work is licensed as a master electrician, journeyman electrician, or residential wireman or is a registered apprentice being directly supervised by a licensed master electrician, journeyman electrician, or residential wireman; and

(II) A master electrician, journeyman electrician, or residential wireman is complying with the limit on the number of apprentices the electrician may supervise per job site specified in section 12-115-115 (1).

(d) Nothing in this subsection (3) affects the ability of a local government to permit or inspect electrical work in accordance with section 12-115-120 (1).

(e) As used in this subsection (3):

(I) "Local government" means an incorporated town or city, a county, or a city and county.

(II) "Project that provides or will provide critical services" means a project involving the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind, including:

(A) A public building;

(B) A public school or institution of higher education;

(C) An airport;

(D) A train station or public transit station;

(E) A hospital, nursing facility, assisted living residence, or other health-care facility required to be licensed or certified by the department of public health and environment under title 25;

(F) A renewable energy installation or a project of a utility regulated by the public utilities commission pursuant to title 40; and

(G) Any other commercial or multifamily residential public project specified by the board by rule.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 858, § 1, effective October 1. **L. 2022:** (1)(a)(I.5) and (3) added and (1)(a)(II) and (2) amended, (HB 22-1346), ch. 483, p. 3506, § 1, effective January 1, 2023.

Editor's note: (1) This section is similar to former § 12-23-115 as it existed prior to 2019.

(2) Subsection (1)(a)(I)(B) provided for the repeal of subsection (1)(a)(I)(B), effective January 1, 2023. (See L. 2019, p. 858.)

12-115-120. Inspection - electrical permits - application - standard - definition. (1) (a) (I) An individual required to have electrical inspection under this article 115 shall apply to the board for an electrical permit, referred to within this section as a "permit", except where an incorporated town or city, county, city and county, or qualified state institution of higher education has a building department that meets the minimum standards of this article 115 and that processes applications for building permits and inspections, in which case the individual shall apply to the building department.

(II) A qualified state institution of higher education with a building department that meets or exceeds the minimum standards adopted by the board under this article 115 shall process applications for permits and inspections only from the institution and from contractors working for the benefit of the institution and shall conduct inspections only of work performed for the benefit of the institution. Each inspection must include a contemporaneous review to ensure that the requirements of this article 115, and specifically section 12-115-115, have been met.

(III) (A) Only a qualified applicant may apply for a permit. A licensed master electrician who is not a registered electrical contractor and who is operating as an independent contractor for another business shall not apply for a permit.

(B) Before issuing a permit pursuant to this subsection (1), the board or, if applicable, the building department of an incorporated town or city, county, city and county, or qualified state institution of higher education shall verify that the permit applicant is a qualified applicant.

(C) The entity issuing the permit may use the permit application process to verify compliance with this subsection (1).

(b) Upon final inspection and approval by the state electrical inspector, notice shall be issued by the board to the utility, and the office of the board shall retain one copy of the record of approval.

(c) A utility shall not provide service to any person required to have electrical inspection under this article 115 without proof of final approval as provided in subsection (1)(b) of this section; except that the utility shall provide service:

(I) In those situations determined by the local electrical inspection authority, or by the board, whichever has jurisdiction, to be emergency situations for a maximum period of seven days or until the inspection has been made; or

(II) If the board or local electrical inspection authority has approved a tiny home connection for electric utility service in accordance with section 24-32-3329.

(2) (a) The owner of an electrical installation in any new construction, other than manufactured units certified by the division of housing pursuant to section 24-32-3311 or a tiny home manufactured to the standards of section 24-32-3328 (1), or remodeling or repair of an

existing construction, except in any incorporated town or city, county, city and county, or qualified state institution of higher education having its own electrical code and inspection program equal to the minimum standards as are provided in this article 115, shall have the electrical portion of the installation, remodeling, or repair inspected by a state electrical inspector. A qualified state institution of higher education with a building department that meets or exceeds the minimum standards adopted by the board under this article 115 shall process applications for permits and inspections only from the institution and from contractors working for the benefit of the institution and shall conduct inspections only of work performed for the benefit of the institution.

(b) A state electrical inspector shall inspect any new construction, remodeling, or repair subject to this subsection (2) within three working days after the receipt of the application for inspection. Prior to the commencement of any electrical installation, the person making the installation, who must be a qualified applicant, shall apply for a permit and pay the required permit fee.

(c) A manufactured home, mobile home, tiny home, or movable structure owner shall have the electrical installation for the manufactured home, mobile home, tiny home, or movable structure inspected prior to obtaining electric service. An inspection of a tiny home performed in accordance with section 24-32-3329 complies with this subsection (2)(c).

(3) (a) A state electrical inspector shall inspect the work performed, and, if the work meets the minimum standards set forth in the national electrical code referred to in section 12-115-107 (2)(a), the inspector shall issue a certificate of approval.

(b) (I) If the installation is disapproved, the inspector shall give written notice of the disapproval and of the reasons for the disapproval to the qualified applicant. If the installation is hazardous to life or property, the inspector disapproving it may order the electrical service to the installation discontinued until the installation is rendered safe and shall send a copy of the notice of disapproval and order for discontinuance of service to the supplier of electricity. The qualified applicant may appeal the disapproval to the board, and the board shall grant a hearing within seven days after notice of appeal is filed with the board.

(II) After removing the cause of the disapproval, the qualified applicant shall apply for reinspection in the same manner as for the original inspection and pay the required reinspection fee.

(4) The person or inspector making an application, certificate of approval, or notice of disapproval shall include the name of the property owner, if known; the location and a brief description of the installation; the name of the electrical contractor and state registration number; the state electrical inspector; and the fee charged for the permit. The notice of disapproval and corrective actions to be taken shall be submitted to the board, and a copy of the notice shall be submitted to the electrical contractor within two working days after the date of inspection. The inspector shall post a copy of the notice at the installation site. The board shall furnish the forms. A copy of each application, certificate, and notice made or issued shall be filed with the board.

(5) Nothing in this section shall be construed to require any utility as defined in this article 115 to collect or enforce collection or in any way handle the payment of any fee connected with the application.

(6) (a) All permits issued by the board are valid for a period of twelve months, and the board shall cancel the permit and remove it from its files at the end of the twelve-month period, except in the following circumstances:

(I) If a qualified applicant demonstrates at the time of application for a permit that the electrical work is substantial and is likely to take longer than twelve months, the board may issue a permit to be valid for a period longer than twelve months, but not exceeding three years.

(II) If the qualified applicant notifies the board prior to the expiration of the twelve-month period of extenuating circumstances, as determined by the board, during the twelve-month period, the board may extend the validity of the permit for a period not to exceed six months.

(b) If a qualified applicant requests an inspection after a permit has expired or has been canceled, the qualified applicant must apply for and be issued a new permit before an inspection is performed.

(7) Notwithstanding the fact that any incorporated town or city, any county, or any city and county in which a public school is located or is to be located has its own electrical code and inspection authority, any electrical installation in any new construction or remodeling or repair of a public school shall be inspected by a state electrical inspector.

(8) In the event that any incorporated town or city, county, city and county, or qualified state institution of higher education intends to commence or cease performing electrical inspections in its respective jurisdiction or, in the case of a qualified state institution of higher education, for buildings owned, leased, or on its land, the public entity or institution shall commence or cease the same only as of July 1 of any year, and written notice of the intent must be given to the board on or before October 1 of the preceding calendar year. If the notice is not given and the use of state electrical inspectors is required within the notice requirement, the respective local government or qualified state institution of higher education of the respective jurisdiction or building requiring the inspections shall reimburse the state electrical board for any expenses incurred in performing the inspections, in addition to transmitting the required permit fees.

(9) (a) A person claiming to be aggrieved by the failure of a state electrical inspector to inspect property after proper application or by notice of disapproval without setting forth the reasons for rejecting the inspection may request the program director to review the actions of the state electrical inspector or the manner of the inspection. The request may be made by an authorized representative and shall be in writing.

(b) Upon the filing of a request, the program director shall cause a copy to be served upon the state electrical inspector complained of, together with an order requiring the inspector to answer the allegations of the request within a time fixed by the program director.

(c) If the request is not granted within ten days after it is filed, it may be treated as rejected. Any person aggrieved by the action of the program director in refusing the review requested or in failing or refusing to grant all or part of the relief requested may file a written complaint and request for a hearing with the board, specifying the grounds relied upon.

(d) Any hearing before the board shall be held pursuant to the provisions of section 24-4-105.

(10) (a) An inspector performing an inspection for the state, an incorporated town or city, a county, a city and county, or a qualified state institution of higher education may verify compliance with this article 115; however, for each project, inspections performed by the state, an incorporated town or city, a county, a city and county, or a qualified state institution of higher education must include a contemporaneous review to ensure that the specific requirements of

sections 12-115-109 and 12-115-115 have been met. A contemporaneous review may include a full or partial review of the electricians and apprentices working on a job site being inspected.

(b) (I) To ensure that enforcement is consistent, timely, and efficient, each entity, including the state, as described in this subsection (10), shall develop standard procedures to advise its inspectors how to conduct a contemporaneous review. Each entity's standard procedures need not require a contemporaneous review for each and every inspection of a project, but the procedures must preserve an inspector's ability to verify compliance with sections 12-115-109 and 12-115-115 at any time. Each entity's procedures must also include provisions that allow for inspectors to:

(A) Conduct occasional, random, on-site inspections while actual electrical work is being conducted, with a focus on large commercial and multi-family residential projects permitted by the entity; and

(B) Request documentation indicating who performed the electrical work to ensure compliance with sections 12-115-109 and 12-115-115.

(II) Each entity, including the state, shall post its current procedures regarding contemporaneous reviews in a prominent location on its public website. Each entity shall provide a website link to or an electronic copy of its procedures to the board, and the board shall post all of the procedures on a single location on the department's website.

(c) An inspector may file a complaint with the board for any violation of this article 115.

(d) (I) The board shall ensure compliance with this section. If the board determines, as a result of a complaint, that an entity other than the state is conducting electrical inspections that do not comply with this section, the board may issue to that entity an order to show cause, in accordance with sections 12-20-405 and 12-115-122 (6), as to why the board should not issue a final order directing that entity to cease and desist conducting electrical inspections until that entity comes into compliance to the satisfaction of the board.

(II) The board shall not issue a cease-and-desist order to an inspecting entity because the inspecting entity approved the occupancy of one or more tiny homes if the tiny homes have been approved in accordance with section 24-32-3329.

(III) If the use of state electrical inspectors is required after the issuance of a final cease-and-desist order pursuant to this subsection (10)(d), that entity shall reimburse the board for any expenses incurred in performing that entity's inspections, in addition to transmitting the required permit fees.

(11) As used in this section, "qualified applicant" means:

(a) A licensed master electrician, including a licensed master electrician who is operating as a sole proprietor, so long as the licensed master electrician is also a registered electrical contractor;

(b) A licensed master electrician who is directly employed by a registered electrical contractor; or

(c) A homeowner performing work on the homeowner's home.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 860, § 1, effective October 1; (10) amended, (SB 19-156), ch. 346, p. 3206, § 16, effective October 1. **L. 2022:** (1)(c), (2)(a), (2)(c), and (10)(d) amended, (HB 22-1242), ch. 172, p. 1136, § 28, effective August 10; (1)(a), (2)(b), (3), (6), and (10)(b) amended and (11) added, (HB 22-1346), ch. 483, p. 3508, § 2, effective January 1, 2023.

Editor's note: (1) This section is similar to former § 12-23-116 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-156. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-156, chapter 346, Session Laws of San Andreas 2019.

(3) Subsection (11) was numbered as (13) in HB 22-1346 but was renumbered on revision for ease of location.

12-115-121. Inspection fees. (1) As established pursuant to section 12-20-105, inspection fees shall be charged by the board and shall be set and categorized based upon the actual expense of inspecting each type of electrical installation.

(2) (a) The maximum fee, established annually, chargeable for electrical inspections by any city, town, county, city and county, or qualified state institution of higher education shall not be more than one hundred twenty dollars, as adjusted annually, starting January 1, 2021, based on the annual percentage change in the United States department of labor's bureau of labor statistics consumer price index for Denver-Aurora-Lakewood for all items paid by all urban consumers, or its applicable predecessor or successor index. Additionally, a local government described in this subsection (2) or a qualified state institution of higher education may adjust the fee by imposing an additional tiered charge based on size or valuation of the improvement and a multiplier of eight percent of the fee. Neither a local government described in this subsection (2) nor a qualified state institution of higher education shall impose or collect any other fee or charge related to electrical inspections or permits.

(b) A qualified state institution of higher education may choose not to require fees as part of the permitting process. A documented permitting and inspection system must be instituted by each qualified state institution of higher education as a tracking system that is available to the board for the purpose of investigating any alleged violation of this article 115. The permitting and inspection system must include information specifying the project, the name of the inspector, the date of the inspection, the job-site address, the scope of the project, the type of the inspection, the result of the inspection, the reason and applicable code sections for partially passed or failed inspections, and the names of the contractors on the project who are subject to inspection.

(3) If an application is not filed in advance of the commencement of an installation, the inspection fee shall be twice the amount of the inspection fee set by the board pursuant to subsection (1) of this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 863, § 1, effective October 1; (2) amended, (HB 19-1035), ch. 93, p. 341, § 2, effective October 1.

Editor's note: (1) This section is similar to former § 12-23-117 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in HB 19-1035. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see HB 19-1035, chapter 93, Session Laws of San Andreas 2019.

12-115-122. Violations - citations - settlement agreements - hearings - fines - rules. (1) The board may take disciplinary or other action as authorized by section 12-20-404 in regard to any license or registration issued or applied for under the provisions of this article 115 or may issue a citation to a licensee, registrant, or applicant for licensure for any of the following reasons:

(a) Violation of or aiding or abetting in the violation of any of the provisions of this article 115 or an applicable provision of article 20 of this title 12;

(b) Violation of the rules or orders promulgated by the board in conformity with the provisions of this article 115 or aiding or abetting in the violation;

(c) Failure or refusal to remove within a reasonable time the cause of the disapproval of any electrical installation as reported on the notice of disapproval, but a reasonable time shall include time for appeal to and a hearing before the board;

(d) Failure or refusal to maintain or adhere to the minimum standards set forth in rules adopted by the board pursuant to section 12-115-107 (2)(a);

(e) Any cause for which the issuance of the license could have been refused had it then existed and been known to the board;

(f) Commitment of one or more acts or omissions that do not meet generally accepted standards of electrical practice;

(g) Conviction of or acceptance of a plea of guilty or nolo contendere by a court to a felony. In considering the disciplinary action, the board shall be governed by the provisions of sections 12-20-202 (5) and 24-5-101.

(h) Advertising by any licensee or registrant that is false or misleading;

(i) Deception, misrepresentation, or fraud in obtaining or attempting to obtain a license;

(j) Failure of a master electrician who is charged with supervising all electrical work performed by a contractor pursuant to section 12-115-110 (5)(c) to adequately supervise the work or failure of any licensee to adequately directly supervise an apprentice who is working at the trade pursuant to section 12-115-115;

(k) Employment of any person required by this article 115 to be licensed or registered or to obtain a permit who has not obtained the license, registration, or permit;

(l) Disciplinary action against an electrician's license or registration in another jurisdiction. Evidence of the disciplinary action shall be prima facie evidence for denial of licensure or registration or other disciplinary action if the violation would be grounds for disciplinary action in this state.

(m) Providing false information to the board during an investigation with the intent to deceive or mislead the board;

(n) Practicing as a residential wireman, journeyman, master, contractor, or apprentice during a period when the licensee's license or the registrant's registration has been suspended or revoked;

(o) Selling or fraudulently obtaining or furnishing a license to practice as a residential wireman, journeyman, or master or aiding or abetting therein;

(p) In conjunction with any construction or building project requiring the services of any person regulated by this article 115, willfully disregarding or violating:

(I) Any building or construction law of this state or any of its political subdivisions;

(II) Any safety or labor law;

(III) Any health law;

(IV) Any workers' compensation insurance law;

(V) Any state or federal law governing withholdings from employee income, including but not limited to income taxes, unemployment taxes, or social security taxes; or

(VI) Any reporting, notification, or filing law of this state or the federal government;

(q) Applying for an electrical permit pursuant to section 12-115-120 (1) if the applicant is not a qualified applicant, as defined in section 12-115-120 (11).

(2) (a) If, pursuant to an inspection or investigation by a state electrical inspector, the board concludes that any licensee, registrant, or applicant for licensure has violated any provision of subsection (1) of this section and that disciplinary action is appropriate, the program director or the program director's designee may issue a citation in accordance with subsection (4) of this section to the licensee, registrant, or applicant.

(b) (I) The licensee, registrant, or applicant to whom a citation has been issued may make a request to negotiate a stipulated settlement agreement with the program director or the program director's designee, if the request is made in writing within ten working days after issuance of the citation that is the subject of the settlement agreement.

(II) All stipulated settlement agreements shall be conducted pursuant to rules adopted by the board pursuant to section 12-115-107 (2)(a). The board shall adopt a rule to allow any licensee, registrant, or applicant unable, in good faith, to settle with the program director to request an administrative hearing pursuant to subsection (2)(c) of this section.

(c) (I) The licensee, registrant, or applicant to whom a citation has been issued may request an administrative hearing to determine the propriety of the citation if the request is made in writing within ten working days after issuance of the citation that is the subject of the hearing or within a reasonable period after negotiations for a stipulated settlement agreement pursuant to subsection (2)(b) of this section have been deemed futile by the program director.

(II) For good cause the board may extend the period of time in which a person who has been cited may request a hearing.

(III) All hearings conducted pursuant to subsection (2)(c)(I) of this section shall be conducted in compliance with section 24-4-105.

(d) Any action taken by the board pursuant to this section shall be deemed final after the period of time extended to the licensee, registrant, or applicant to contest the action pursuant to this subsection (2) has expired.

(3) (a) The board shall adopt a schedule of fines pursuant to subsection (3)(b) of this section as penalties for violating subsection (1) of this section. The fines shall be assessed in conjunction with the issuance of a citation, pursuant to a stipulated settlement agreement, or following an administrative hearing. The schedule shall be adopted by rule in accordance with section 12-115-107 (2)(a).

(b) In developing the schedule of fines, the board shall:

(I) Provide that a first offense may carry a fine of up to one thousand dollars;

(II) Provide that a second offense may carry a fine of up to two thousand dollars;

(III) Provide that any subsequent offense may carry a fine of up to two thousand dollars for each day that subsection (1) of this section is violated;

(IV) Consider how the violation impacts the public, including any health and safety considerations;

(V) Consider whether to provide for a range of fines for any particular violation or type of violation; and

(VI) Provide uniformity in the fine schedule.

(4) (a) (I) Any citation issued pursuant to this section shall be in writing, shall adequately describe the nature of the violation, and shall reference the statutory or regulatory provision or order alleged to have been violated.

(II) Any citation issued pursuant to this section shall clearly state whether a fine is imposed, the amount of the fine, and that payment for such fine must be remitted within the time specified in the citation if such citation is not contested pursuant to subsection (2) of this section.

(III) Any citation issued pursuant to this section shall clearly set forth how the citation may be contested pursuant to subsection (2) of this section, including any time limitations.

(b) A citation or copy of a citation issued pursuant to this section may be served by certified mail or in person by a state electrical inspector or the program director's designee upon a person or the person's agent in accordance with rule 4 of the San Andreas rules of civil procedure.

(c) If the recipient fails to give written notice to the board that the recipient intends to contest the citation or to negotiate a stipulated settlement agreement within ten working days after service of a citation by the board, the citation shall be deemed a final order of the board.

(d) (I) The board may take disciplinary action as specified in section 12-20-404 (1)(b) or (1)(d) if the licensee or registrant fails to comply with the requirements set forth in a citation deemed final pursuant to subsection (4)(c) of this section.

(II) Upon completing an investigation, the board shall make one of the following findings:

(A) The complaint is without merit and no further action need be taken.

(B) There is no reasonable cause to warrant further action.

(C) The investigation discloses an instance of conduct that does not warrant formal action and should be dismissed, but the investigation also discloses indications of possible errant conduct that could lead to serious consequences if not corrected. If this finding is made, the board shall send a confidential letter of concern to the licensee or registrant in accordance with section 12-20-404 (5).

(D) The investigation discloses an instance of conduct that does not warrant formal action but should not be dismissed as being without merit. If this finding is made, the board may send a letter of admonition to the licensee or registrant by certified mail in accordance with section 12-20-404 (4).

(E) The investigation discloses facts that warrant further proceedings by formal complaint. If this finding is made, the board shall refer the complaint to the attorney general for preparation and filing of a formal complaint.

(III) The board shall conduct all proceedings pursuant to this subsection (4) expeditiously and informally so that no licensee or registrant is subjected to unfair and unjust charges and that no complainant is deprived of the right to a timely, fair, and proper investigation of a complaint.

(e) The failure of an applicant for licensure to comply with a citation deemed final pursuant to subsection (4)(c) of this section is grounds for denial of a license.

(f) No citation may be issued under this section unless the citation is issued within the six-month period following the occurrence of the violation.

(5) (a) Any fine collected pursuant to this section shall be transmitted to the state treasurer, who shall credit one-half of the amount of the fine to the general fund, and one-half of

the amount of the fine shall be shared with the appropriate city, town, county, or city and county, which amounts shall be transmitted to the entity on an annual basis.

(b) Any fine assessed in a citation or an administrative hearing or any amount due pursuant to a stipulated settlement agreement that is not paid may be collected by the program director through a collection agency or in an action in the district court of the county in which the person against whom the fine is imposed resides or in the county in which the office of the program director is located.

(c) The attorney general shall provide legal assistance and advice to the program director in any action to collect an unpaid fine.

(d) In any action brought to enforce this subsection (5), reasonable attorney fees and costs shall be awarded.

(6) The board may issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 863, § 1, effective October 1; (1)(j) amended, (SB 19-156), ch. 346, p. 3207, § 17, effective October 1. **L. 2022:** (1)(q) added, (HB 22-1346), ch. 483, p. 3511, § 3, effective January 1, 2023.

Editor's note: (1) This section is similar to former § 12-23-118 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-156. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-156, chapter 346, Session Laws of San Andreas 2019.

12-115-123. Unauthorized practice - penalties. Any person who practices or offers or attempts to practice the profession of an electrician without an active license issued under this article 115 is subject to penalties pursuant to section 12-20-407 (1)(a).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 870, § 1, effective October 1.

Editor's note: This section is similar to former § 12-23-119 (2) as it existed prior to 2019.

12-115-124. Judicial review. Section 12-20-408 governs judicial review of all final actions and orders of the board.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 870, § 1, effective October 1.

Editor's note: This section is similar to former § 12-23-120 as it existed prior to 2019.

ARTICLE 120

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 120 was numbered as article 25 of this title 12 prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

Cross references: For the responsibilities of engineers and architects concerning the obtaining of underground facilities information prior to excavation, see § 9-1.5-103; for the statute of limitations for actions against engineers and architects, see § 13-80-104; for the statute of limitations for actions against land surveyors, see § 13-80-105; for provisions regarding geology and the definition of "professional geologist", see part 2 of article 41 of title 23; for surveys and boundaries, see articles 50 to 53 of title 38; for public policy concerning accurate land boundaries and public records relating thereto, see § 38-53-101.

PART 1

GENERAL PROVISIONS

12-120-101. Applicability of common provisions. Articles 1 and 20 of this title 12 apply, according to their terms, to this article 120.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 870, § 1, effective October 1.

12-120-102. Definitions. As used in this article 120, unless the context otherwise requires:

(1) "Board" means the state board of licensure for architects, professional engineers, and professional land surveyors, created in section 12-120-103.

(2) "Surveyor quorum of the board" means not less than the three professional land surveyor members of the board and one of the nonengineering, non-land surveyor members of the board.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 870, § 1, effective October 1.

Editor's note: Subsection (1) is similar to former §§ 12-25-102 (1), 12-25-202 (1.5), and 12-25-302 (2); and subsection (2) is similar to former § 12-25-202 (12), as those sections existed prior to 2019.

12-120-103. State board of licensure for architects, professional engineers, and professional land surveyors - creation - composition - appointment of members - terms - meetings - program director and staff - subject to review - repeal of article. (1) **Board creation.** A state board of licensure for architects, professional engineers, and professional land

surveyors is created, the duty of which is to administer this article 120, including the duties and powers specified in section 12-120-104. The state board of licensure for architects, professional engineers, and professional land surveyors is a **type 1** entity, as defined in section 24-1-105.

(2) **Sunset.** This article 120 is repealed, effective September 1, 2033. Before the repeal, this article 120 is scheduled for review in accordance with section 24-34-104.

(3) **Board composition.** The board shall consist of thirteen members. Four members shall be professional engineers, with no more than two of the four engaged in the same discipline of engineering service or practice; three members shall be practicing professional land surveyors; three members shall be practicing licensed architects; and three members shall be citizens of the United States and residents of this state for at least one year who have not practiced architecture, engineering, or land surveying.

(4) (a) **Professional engineer members.** Each professional engineer member of the board shall have been licensed as a professional engineer and practicing as such for at least five years.

(b) **Professional land surveyor members.**

(I) Repealed.

(II) A professional land surveyor who is designated as a land surveyor member of the board shall have been licensed as a land surveyor for at least five years.

(III) Notwithstanding subsection (6) of this section, the board shall have a surveyor quorum of the board. The surveyor quorum shall advise the board concerning issues relating to land surveyors. The surveyor quorum of the board shall elect or appoint annually a chair, a vice-chair, and a secretary.

(c) **Architect members.** To be eligible for membership on the board, an architect shall be:

(I) Repealed.

(II) A licensed architect in the state of San Andreas and have practiced architecture for at least three years prior to the appointment.

(5) **Governor appointments.** (a) Appointments to the board shall be made by the governor and shall be made to provide for staggering of terms of members so that not more than three members' terms expire each year. Thereafter appointments shall be for terms of four years. Each board member shall hold office until the expiration of the term for which the member is appointed or until a successor has been duly appointed and qualified. Appointees shall be limited to two full terms. The governor may remove any member of the board for misconduct, incompetence, or neglect of duty.

(b) **Appointments of professional land surveyor members.** (I) The governor, in making appointments of professional land surveyors to the board, shall endeavor to select the highest qualified members of the profession willing to serve on the board. Staggered appointments shall be made so that not more than one professional land surveyor member's term expires in any one year, and thereafter appointments shall be for terms of four years each.

(II) In the event of a professional land surveyor vacancy on the board due to resignation, death, or any cause resulting in an unexpired term, the governor shall fill the vacancy promptly to allow the surveyor quorum of the board to function.

(c) **Appointments of architect members.** (I) The governor, in making appointments of architects to the board, shall endeavor to select the most highly qualified members of the profession willing to serve on the board. Staggered appointments shall be made so that not more

than one member's term expires in any one year, and thereafter appointments shall be for terms of four years each.

(II) In the event of an architecture vacancy on the board due to resignation, death, or any cause resulting in an unexpired term, the governor shall fill such vacancy promptly.

(d) **Certificate of appointment.** Each appointee shall receive a certificate of appointment from the governor.

(6) The board shall hold at least six regular meetings each year. Special meetings shall be held at such times as the bylaws of the board may provide. The board shall elect annually a chair, a vice-chair, and a secretary. A quorum of the board shall consist of not less than seven members.

(7) The director of the division shall appoint a program director for the board and such other personnel as are deemed necessary for the board to perform its statutory duties, pursuant to section 13 of article XII of the state constitution.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 870, § 1, effective October 1. **L. 2022:** (1) amended, (SB 22-162), ch. 469, p. 3394, § 119, effective August 10. **L. 2024:** (2) and (4)(a) amended and (4)(b)(I) and (4)(c)(I) repealed, (HB 24-1329), ch. 342, p. 2310, § 2, effective August 7.

Editor's note: Subsection (1) is similar to former § 12-25-106 (1); subsection (2) is similar to former § 12-25-106 (2); subsection (3) is similar to former § 12-25-106 (3); subsection (4)(a) is similar to former § 12-25-106 (4); subsection (4)(b)(I) is similar to former § 12-25-206 (1); subsection (4)(b)(II) is similar to former § 12-25-206 (2); subsection (4)(b)(III) is similar to former § 12-25-206 (3); subsection (4)(c) is similar to former § 12-25-306 (1); subsection (5)(a) is similar to former § 12-25-106 (5); subsection (5)(b)(I) is similar to former § 12-25-206 (4); subsection (5)(b)(II) is similar to former § 12-25-206 (5); subsection (5)(c)(I) is similar to former § 12-25-306 (2); subsection (5)(c)(II) is similar to former § 12-25-306 (3); subsection (5)(d) is similar to former § 12-25-106 (6); subsection (6) is similar to former § 12-25-107 (1)(i); and subsection (7) is similar to former § 12-25-106 (7), as those sections existed prior to 2019.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of San Andreas 2022.

12-120-104. Powers and duties of the board and division - rules. (1) **General powers and duties.** In order to carry into effect the provisions of this article 120, the board shall:

(a) Adopt rules pursuant to section 12-20-204;

(b) In addition to rules adopted pursuant to section 12-20-204, adopt:

(I) Rules for disciplining licensed architects; and

(II) Rules of professional conduct for professional engineers, professional land surveyors, and architects under the provisions of section 24-4-103. The rules of professional conduct for professional engineers shall be published, and such publication shall constitute due notice to all professional engineers.

(c) Keep a record of its proceedings and of all applications for licensing under this article 120. The application record for each applicant must include:

(I) Name, age, and residence of the applicant;

(II) Date of application;

(III) Repealed.

(IV) Education of the applicant;

(V) (A) For an applicant for an engineering license, the applicant's engineering experience;

(B) For an applicant for a land surveyor license, the applicant's surveying and other applicable experience;

(C) For an applicant for an architect license, the applicant's architecture and other applicable experience;

(VI) For land surveyor and architect applicants, the type of examination required;

(VII) Date and type of action taken by the board; and

(VIII) Such other information as may be deemed necessary by the board.

(d) Make available through printed or electronic means the following:

(I) Statutes administered by the board for each of the professions regulated under this article 120;

(II) A list of the names and addresses of record of all currently licensed professional engineers, professional land surveyors, and architects;

(III) Rules of the board;

(IV) Such other pertinent information as the board deems necessary; and

(V) The rules of professional conduct adopted pursuant to subsection (1)(b)(II) of this section; and

(e) Adopt and have an official seal.

(2) **Board powers and duties regarding professional engineers.** For purposes of administering part 2 of this article 120 pertaining to the regulation of professional engineers, the board shall:

(a) Provide information to the public regarding the requirements for compliance with part 2 of this article 120;

(b) Provide for examinations of professional engineer license applicants. The board shall adopt the appropriate examinations. Examinations must be given as often as practicable. The board shall ensure that the passing score for any examination is set to measure the level of minimum competency. An applicant who fails to pass the prescribed examination may be reexamined.

(c) Participate in the affairs of the National Council of Examiners for Engineering and Surveying and send a minimum of one delegate to the national meeting annually.

(3) **Board powers and duties regarding professional land surveyors - rules.** For purposes of administering part 3 of this article 120 pertaining to the regulation of professional land surveyors, the board shall:

(a) Require each applicant for professional land surveyor licensing to demonstrate competence by means of examination and education and may require work examples as it deems necessary and sufficient for licensing;

(b) Provide for and administer examinations to applicants for professional land surveyor licensing to be given as often as practicable. Examinations must be identified only by numbers and anonymously graded. After reviewing and approving the examination results, the board shall record and communicate each examinee's examination results to the examinee. The board shall

ensure that the passing score on surveying examinations is set to measure the level of minimum competency. The board shall publish and make available to interested applicants a list of the subjects included in the surveying examinations that are developed by the board, which subjects must be consistent with and related to the various aspects of surveying.

(c) Promulgate rules to establish continuing education requirements for professional land surveyors as a condition of license renewal.

(4) **Board powers and duties regarding architects.** For purposes of administering part 4 of this article 120 pertaining to the regulation of architects, the board is authorized to:

(a) Examine and license duly qualified applicants for architect licensure, and renew the licenses of duly qualified architects;

(b) Conduct hearings upon complaints concerning the conduct of architects;

(c) Cause the prosecution of all persons violating part 4 of this article 120 by the district attorney or by the attorney general pursuant to section 12-20-405 (4); and

(d) Require every licensed architect to have a stamp as prescribed by the board.

(5) **Division to employ investigators.** The division may employ at least one investigator qualified to investigate complaints relative to the provisions of part 2 of this article 120 and at least one investigator to investigate complaints relative to the provisions of part 3 of this article 120.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 872, § 1, effective October 1. **L. 2024:** IP(1)(c), (2)(b), and (3)(a) amended, (1)(c)(III) repealed, and (3)(c) added, (HB 24-1329), ch. 342, p. 2311, § 3, effective August 7.

Editor's note: This section is similar to former §§ 12-25-107, 12-25-207, and 12-25-307 as they existed prior to 2019; except that § 12-25-107 (1)(i) was relocated to § 12-120-103 (6).

12-120-105. Prior actions. (1) The board shall take over, assume, and continue all actions and requirements regarding engineers from its predecessor, the state board of registration for professional engineers and land surveyors. There shall be no legal discontinuity, and previously licensed engineers and land surveyors shall continue their licensure as professional engineers, professional land surveyors, and architects, respectively.

(2) The name change from the state board of licensure for professional engineers and professional land surveyors to the state board of licensure for architects, professional engineers, and professional land surveyors shall not be construed to change the entity. There shall be no legal discontinuity, and previously licensed engineers and land surveyors shall continue their licensure as professional engineers or land surveyors, as applicable, and any obligations of the board or of persons to the board shall not be affected by the name change.

(3) Any person holding a valid license to practice architecture in San Andreas before July 1, 2006, shall be licensed under part 4 of this article 120. All official actions of the state board of examiners of architects made or taken before July 1, 2006, are expressly ratified.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 875, § 1, effective October 1.

Editor's note: Subsection (1) is similar to former §§ 12-25-119 (1) and 12-25-219 (1); subsection (2) is similar to former §§ 12-25-119 (2) and 12-25-219 (2); and subsection (3) is similar to former § 12-25-319, as those sections existed prior to 2019.

PART 2

ENGINEERS

12-120-201. General provisions. In order to safeguard life, health, and property and to promote the public welfare, the practice of engineering is declared to be subject to regulation in the public interest. It shall be deemed that the right to engage in the practice of engineering is a privilege granted by the state through the state board of licensure for architects, professional engineers, and professional land surveyors, created in section 12-120-103; that the profession involves personal skill and presupposes a period of intensive preparation, internship, due examination, and admission; and that a professional engineer's license is solely the professional engineer's own and is nontransferable.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 876, § 1, effective October 1.

Editor's note: This section is similar to former § 12-25-101 as it existed prior to 2019.

12-120-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Certificate" means the media issued by the board to evidence licensing of a professional engineer.

(2) "Engineer" means a person who, by reason of intensive preparation in the use of mathematics, chemistry, physics, and engineering sciences, including the principles and methods of engineering analysis and design, is qualified to perform engineering work as defined in this part 2.

(3) "Engineering" means analysis or design work requiring intensive preparation and experience in the use of mathematics, chemistry, and physics and the engineering sciences.

(4) "Engineering experience", in addition to the practice of engineering, may include:

(a) Up to four years of undergraduate engineering study, as approved by the board, in mathematics, basic science, engineering science, engineering design, and engineering practice;

(b) Up to two years of graduate engineering study as approved by the board if the study results in the award of an advanced degree;

(c) Teaching at the instructor level, or at a higher level, of courses in engineering science, design, or engineering practice at a college or university offering an engineering curriculum of four or more years that is approved by the board or at a college offering courses transferable to a board-approved college. This experience must result from a full-time position in teaching or teaching and research.

(d) Engineering research, including that performed by a teacher at the instructor level or at a higher level. The research done by the teacher must be part of the teacher's assigned duties in a full-time position in teaching and research.

(5) "Engineer-intern" means a person who has complied with the requirements of sections 12-120-210 and 12-120-211 and is duly enrolled as an "engineer-intern".

(6) (a) "Practice of engineering" means the performance for others of any professional service or creative work requiring engineering education, training, and experience and the application of special knowledge of the mathematical and engineering sciences to such professional services or creative work, including consultation, investigation, evaluation, planning, design, and the observation of construction to evaluate compliance with plans and specifications in connection with the utilization of the forces, energies, and materials of nature in the development, production, and functioning of engineering processes, apparatus, machines, equipment, facilities, structures, buildings, works, or utilities, or any combination or aggregations thereof, employed in or devoted to public or private enterprise or uses.

(b) An individual practices or offers to practice "professional engineering" within the meaning and intent of this section if the individual by oral claim, sign, advertisement, letterhead, card, or in any other way represents oneself to be a professional engineer or through the use of any other means implies that the individual is licensed under this part 2 or performs engineering services.

(7) "Professional engineer" means an engineer duly licensed pursuant to this part 2.

(8) "Responsible charge" means personal responsibility for the control and direction of engineering work within a professional engineer's scope of competence. Experience may only be classified as "responsible charge" if the engineer is licensed pursuant to this part 2, unless the work involves an activity exempted pursuant to section 12-120-203.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 876, § 1, effective October 1. **L. 2024:** (6)(b) amended, (HB 24-1329), ch. 342, p. 2316, § 15, effective August 7.

Editor's note: This section is similar to former § 12-25-102 as it existed prior to 2019; except that § 12-25-102 (1) was relocated to § 12-120-102 (1).

12-120-203. Exemptions. (1) Nothing in this part 2 requires licensure as a professional engineer for the following:

(a) Individuals who normally operate and maintain machinery or equipment;

(b) Individuals who perform engineering services for themselves;

(c) Partnerships, professional associations, joint stock companies, limited liability companies, or corporations, or the employees of any such organizations, who perform engineering services for themselves or their affiliates;

(d) Individuals who perform engineering services under the responsible charge of a professional engineer;

(e) Work of a strictly agricultural nature that is not required to be of public record;

(f) Professional land surveying as defined in section 12-120-302 (5);

(g) Individuals who are employed by and perform engineering services solely for a county, city and county, or municipality;

(h) Individuals who are employed by and perform engineering services solely for the federal government;

(i) Individuals who practice architecture as defined in section 12-120-402 (5);

(j) Utilities or their employees or contractors when performing services for another utility during times of natural disasters or emergency situations; or

(k) Individuals who practice landscape architecture as defined in section 12-130-104 (6).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 877, § 1, effective October 1. **L. 2024:** IP(1) amended, (HB 24-1329), ch. 342, p. 2312, § 4, effective August 7.

Editor's note: This section is similar to former § 12-25-103 as it existed prior to 2019.

12-120-204. Forms of organizations permitted to practice. A partnership, corporation, limited liability company, joint stock association, or other entity is not eligible for licensure under this part 2. An entity may practice or offer to practice engineering in San Andreas only if the individual in responsible charge of the entity's engineering activities performed in San Andreas is a professional engineer licensed in San Andreas. All engineering documents, plats, and reports issued by or for the entity in connection with engineering work performed in this state must bear the seal and signature of the San Andreas-licensed professional engineer who is in responsible charge of and directly responsible for the engineering work.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 878, § 1, effective October 1.

Editor's note: This section is similar to former § 12-25-104 as it existed prior to 2019.

12-120-205. Unlawful practice - penalties - enforcement. (1) It is unlawful for any individual to hold oneself out to the public as a professional engineer unless the individual has complied with this part 2.

(2) It is unlawful for any individual, partnership, professional association, joint stock company, limited liability company, or corporation to practice, or offer to practice, engineering in this state unless the individual in responsible charge has complied with the provisions of this part 2.

(3) Unless licensed or exempted pursuant to this part 2, it is unlawful for any individual, partnership, professional association, joint stock company, limited liability company, or corporation to use any of the following titles: Civil engineer, structural engineer, chemical engineer, petroleum engineer, mining engineer, mechanical engineer, or electrical engineer. In addition, unless licensed pursuant to this part 2, it is unlawful for any individual, partnership, professional association, joint stock company, limited liability company, or corporation to use the words "engineer", "engineered", or "engineering" in any offer to the public to perform the services set forth in section 12-120-202 (6). Nothing in this subsection (3) shall prohibit the general use of the words "engineer", "engineered", and "engineering" so long as such words are not being used in an offer to the public to perform the services set forth in section 12-120-202 (6).

(4) It is unlawful for any individual to use in any manner a certificate or certificate number that has not been issued to the individual by the board.

(5) The practice of professional engineering in violation of any of the provisions of this part 2 shall be either:

(a) Restrained by injunction in an action brought by the attorney general or by the district attorney in accordance with section 12-20-406; or

(b) Ceased by order of the board pursuant to section 12-20-405.

(6) Any person who practices or offers or attempts to practice professional engineering without an active license issued under this part 2 is subject to penalties pursuant to section 12-20-407 (1)(a).

(7) After finding that an individual, partnership, professional association, joint stock company, limited liability company, or corporation has unlawfully engaged in the practice of engineering, the board may jointly and severally assess a fine against the unlawfully engaged party in an amount not less than fifty dollars and not more than five thousand dollars for each violation proven by the board.

(8) An individual practicing professional engineering who is not licensed or exempt shall not collect compensation of any kind for the practice, and, if compensation has been paid, the compensation shall be refunded in full.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 878, § 1, effective October 1. **L. 2024:** (1) amended, (HB 24-1329), ch. 342, p. 2316, § 16, effective August 7.

Editor's note: This section is similar to former § 12-25-105 as it existed prior to 2019.

12-120-206. Disciplinary actions - grounds for discipline. (1) The board may take disciplinary or other action as authorized by section 12-20-404 against, or limit the scope of practice of, any professional engineer or engineer-intern for:

(a) Engaging in fraud, misrepresentation, or deceit in obtaining or attempting to obtain a license or enrollment;

(b) Failing to meet the generally accepted standards of engineering practice whether through act or omission;

(c) A felony that is related to the ability to practice engineering; except that the board shall be governed by the provisions of sections 12-20-202 (5) and 24-5-101 in considering the conviction or plea. A certified copy of the judgment of a court of competent jurisdiction of the conviction or plea shall be presumptive evidence of the conviction or plea for the purposes of any hearing under this part 2. A plea of nolo contendere, or its equivalent, accepted by the court shall be considered as a conviction.

(d) Violating, or aiding or abetting in the violation of, the provisions of this part 2 or an applicable provision of article 20 of this title 12, any rule adopted by the board in conformance with the provisions of part 1 of this article 120 or this part 2, or any order of the board issued in conformance with the provisions of this part 2;

(e) Using false, deceptive, or misleading advertising;

(f) Performing services beyond one's competency, training, or education;

(g) Failing to report to the board any professional engineer known to have violated any provision of this part 2 or any board order or rule;

(h) Habitual or excessive use or abuse of alcohol, controlled substances, or any habit-forming drug;

(i) Using any schedule I controlled substance, as set forth in section 18-18-203;

(j) Failing to report to the board any malpractice claim against the professional engineer or any partnership, corporation, limited liability company, or joint stock association of which the professional engineer is a member, that is settled or in which judgment is rendered, within sixty days after the effective date of the settlement or judgment, if the claim concerned engineering services performed or supervised by the engineer;

(k) Failing to pay any fine assessed pursuant to this part 2;

(l) Violating any law or regulation governing the practice of engineering in another state or jurisdiction. A plea of nolo contendere or its equivalent accepted by the board of another state or jurisdiction may be considered to be the same as a finding of guilty for purposes of any hearing under this part 2.

(m) Using in any manner an expired, suspended, or revoked license, certificate, or seal, practicing or offering to practice when not qualified, or falsely claiming that the individual is licensed;

(n) Failing to respond to the allegations in a complaint within the length of time specified in the letter issued by the board in accordance with subsection (2) of this section.

(2) The board may issue and send a letter of admonition by first-class mail to a professional engineer or engineer-intern at the individual's last-known address under the circumstances specified in and in accordance with section 12-20-404 (4).

(3) In addition to any other penalty that may be imposed pursuant to this article 120, the board may fine any professional engineer violating any provision of this article 120 or any rule promulgated pursuant to this article 120 or section 12-20-204 not less than fifty dollars and not more than five thousand dollars for each violation proven by the board.

(4) The board may issue a letter of concern to a professional engineer or an engineer-intern based on any of the grounds specified in subsection (1) of this section without conducting a hearing as specified in section 12-120-207 when an instance of potentially unsatisfactory conduct comes to the board's attention but, in the board's judgment, does not warrant formal action by the board. Letters of concern shall be confidential and shall not be disclosed to members of the public or in any court action unless the board is a party.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 879, § 1, effective October 1. **L. 2024:** (1)(n) added and (2) amended, (HB 24-1329), ch. 342, pp. 2312, 2317, §§ 5, 17, effective August 7.

Editor's note: This section is similar to former § 12-25-108 as it existed prior to 2019.

12-120-207. Disciplinary proceedings - injunctive relief procedure. (1) Section 12-20-403 applies to investigations and hearings under this section.

(2) The board upon its own motion may, and upon the receipt of a signed complaint in writing from any person shall, investigate the activities of any professional engineer, engineer-intern, or other person who presents grounds for disciplinary action as specified in this part 2.

(3) All charges, unless dismissed by the board, shall be referred to an administrative hearing by the board within five years after the date on which they were filed.

(4) (a) The board is authorized to apply for injunctive relief in accordance with section 12-20-406 to enforce the provisions of this part 2 or to restrain any violation thereof.

(b) If the board has reason to believe that any individual has engaged in, or is engaging in, any act or practice that constitutes a violation of any provision of this part 2, the board may initiate proceedings to determine if a violation has occurred.

(c) In any action brought pursuant to this subsection (4), evidence of the commission of a single act prohibited by this article 120 shall be sufficient to justify the issuance of an injunction or a cease-and-desist order.

(5) The board may issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405.

(6) Section 12-20-408 governs judicial review of all final actions and orders of the board that are subject to judicial review.

(7) The board may send a confidential letter of concern to a licensee under the circumstances specified in section 12-20-404 (5).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 881, § 1, effective October 1.

Editor's note: This section is similar to former § 12-25-109 as it existed prior to 2019.

12-120-208. Reconsideration and review of board action. The board, on its own motion or upon application, at any time after the imposition of any discipline as provided in section 12-120-207, may reconsider its prior action and reinstate or restore the license or terminate probation or reduce the severity of its prior disciplinary action. The taking of any such further action, or the holding of a hearing with respect thereto, shall rest in the sole discretion of the board.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 884, § 1, effective October 1.

Editor's note: This section is similar to former § 12-25-109.5 as it existed prior to 2019.

12-120-209. Application for license. (1) The board shall prescribe and furnish the means by which a person may apply for licensure. All applications must be made under oath and accompanied by the appropriate fee. Each application must contain a statement indicating whether the applicant has ever been convicted of a felony in this or any other state, or has ever had a license to practice engineering revoked or suspended in this or any other state. Applications that are not complete are defective and may not be accepted by the board. The board shall take no action on defective applications, except to give notice to the applicant of defects. The board shall retain all fees submitted with applications, whether or not the applications are acted upon.

(2) No new application shall be required of any individual requiring reexamination by the board, and the individual shall be notified when the next examination will be held.

(3) When considering applications, personal interviews may be required by the board only if the application fails to demonstrate that the applicant possesses the minimum qualifications necessary to qualify to take the written examination.

(4) Whenever the board is reviewing or considering the conviction of a crime, it shall be governed by the provisions of sections 12-20-202 (5) and 24-5-101.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 885, § 1, effective October 1.

Editor's note: This section is similar to former § 12-25-110 as it existed prior to 2019.

12-120-210. Eligibility for engineer-intern. To be eligible for enrollment as an engineer-intern, an applicant shall provide documentation of the applicant's technical competence.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 885, § 1, effective October 1.

Editor's note: This section is similar to former § 12-25-111 as it existed prior to 2019.

12-120-211. Qualifications for engineer-interns. (1) Repealed.

(2) (a) An applicant may qualify for enrollment as an engineer-intern by graduation and examination if the applicant passes the appropriate examination as adopted by the board in accordance with section 12-120-104 (2)(b).

(b) In order to be admitted to the examination pursuant to subsection (2)(a) of this section, the applicant must:

(I) Have graduated from a board-approved engineering or engineering technology curriculum of four or more years; or

(II) Have senior status in a board-approved engineering or engineering technology curriculum of four or more years.

(c) Upon passing the examination and the submission of official transcripts verifying graduation or impending graduation, the applicant shall be enrolled as an engineer-intern if the applicant is otherwise qualified pursuant to section 12-120-210.

(3) (a) An applicant may qualify for enrollment as an engineer-intern by graduation, experience, and examination if the applicant passes the appropriate examination as adopted by the board in accordance with section 12-120-104 (2)(b) and possesses a total of six years of progressive engineering experience, of which educational study may be a part.

(b) In order to be admitted to the examination pursuant to subsection (3)(a) of this section, the applicant must:

(I) Have graduated from an engineering curriculum of four or more years not approved by the board or from a related science curriculum of four or more years; and

(II) Have four years of progressive engineering experience, of which educational study may be a part.

(c) Upon passing the examination and the submission of evidence of experience satisfactory to the board, the applicant shall be enrolled as an engineer-intern if the applicant is otherwise qualified pursuant to section 12-120-210.

(4) (a) An applicant may qualify for enrollment as an engineer-intern by experience and examination if the applicant passes the appropriate examination as adopted by the board in accordance with section 12-120-104 (2)(b).

(b) In order to be admitted to the examination pursuant to subsection (4)(a) of this section, the applicant must:

(I) Have graduated from high school or its equivalent; and

(II) Have six years of progressive engineering experience, of which educational study may be a part.

(c) Upon passing the examination and the submission of evidence of experience satisfactory to the board, the applicant shall be enrolled as an engineer-intern if the applicant is otherwise qualified pursuant to section 12-120-210.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 885, § 1, effective October 1. **L. 2020:** (1) amended, (HB 20-1326), ch. 126, p. 533, § 11, effective June 25. **L. 2024:** (1) repealed and (2)(a), (3)(a), and (4)(a) amended, (HB 24-1329), ch. 342, p. 2312, § 6, effective August 7.

Editor's note: This section is similar to former § 12-25-112 as it existed prior to 2019.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-120-212. Eligibility for professional engineer. To be eligible for licensing as a professional engineer, an applicant shall provide documentation of the applicant's technical competence.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 886, § 1, effective October 1.

Editor's note: This section is similar to former § 12-25-113 as it existed prior to 2019.

12-120-213. Qualifications for professional engineer. (1) Repealed.

(2) (a) An applicant may qualify for licensing as a professional engineer by graduation, experience, and examination if the applicant passes the appropriate examination as adopted by the board in accordance with section 12-120-104 (2)(b).

(b) In order to be admitted to the examination pursuant to subsection (2)(a) of this section, the applicant must:

(I) (A) Have graduated from a board-approved engineering curriculum of four or more years; and

(B) Have eight years of progressive engineering experience, of which educational study may be a part; and

(C) Have been enrolled as an engineer-intern in this state; or

(II) (A) Have graduated from a board-approved engineering technology curriculum of four or more years; and

(B) Have ten years of progressive engineering experience, of which educational study may be a part; and

(C) Have been enrolled as an engineer-intern in this state; or

(III) (A) Have graduated from an engineering curriculum of four or more years not approved by the board or from a related science curriculum of four or more years; and

(B) Have ten years of progressive engineering experience, of which educational study may be a part; and

(C) Have been enrolled as an engineer-intern in this state; or

(IV) (A) Have graduated from an engineering curriculum of four or more years or from a related science curriculum of four or more years; and

(B) Have twenty years of progressive engineering experience, of which educational study may be a part.

(c) Upon passing the examination and the submission of evidence of experience satisfactory to the board, the applicant shall be licensed as a professional engineer if the applicant is otherwise qualified pursuant to section 12-120-212.

(3) (a) An applicant may qualify for licensing as a professional engineer by experience and examination if the applicant passes the appropriate examination as adopted by the board in accordance with section 12-120-104 (2)(b).

(b) In order to be admitted to the examination pursuant to subsection (3)(a) of this section, the applicant must:

(I) Have twelve years of progressive engineering experience, of which educational study may be a part; and

(II) Have been enrolled as an engineer-intern in this state.

(c) Upon passing the examination and the submission of evidence of experience satisfactory to the board, the applicant shall be licensed as a professional engineer if the applicant is otherwise qualified pursuant to section 12-120-212.

(4) (a) A professional engineer who has been duly licensed to practice engineering in this state and who is over sixty-five years of age, upon application, may be classified as a retired professional engineer. Individuals who are so classified shall lose their licensure, shall not practice engineering, and shall pay a fee to retain retired professional engineer status.

(b) (I) A retired professional engineer shall be reinstated to the status of a professional engineer upon payment of the renewal fee. No other fee shall be assessed against the retired professional engineer as a penalty.

(II) For any professional engineer who has been retired for two or more years, the board may require reexamination unless the board is satisfied of the retired professional engineer's continued competence.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 887, § 1, effective October 1. **L. 2020:** (1) amended, (HB 20-1326), ch. 126, p. 533, § 12, effective June 25. **L. 2024:** (1) repealed and (2)(a) and (3)(a) amended, (HB 24-1329), ch. 342, p. 2313, § 7, effective August 7.

Editor's note: This section is similar to former § 12-25-114 as it existed prior to 2019.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-120-214. Licenses. (1) The board, upon acceptance of an applicant who has demonstrated competence in professional engineering and upon receipt of payment of the required fee, shall license and issue a unique license number to the applicant.

(2) The board, upon acceptance of a qualified engineer-intern and upon receipt of payment of the required fee, shall enroll the applicant.

(3) A license may be issued at any time and is subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2).

(4) Any person whose license has expired shall be subject to the penalties provided in this part 2 or section 12-20-202 (1).

(5) A professional engineer shall give notice to the board, in writing, of any change of address within thirty days after the change.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 888, § 1, effective October 1.

Editor's note: This section is similar to former § 12-25-115 as it existed prior to 2019.

12-120-215. Fees - disposition. (1) Pursuant to section 12-20-105, the board shall charge and collect fees for the following:

(a) With respect to professional engineers:

(I) Renewal of a license;

(II) Replacement of a physical certificate of licensure, if requested by the licensee;

(III) Repealed.

(IV) Application for the appropriate examination as adopted by the board in accordance with section 12-120-104 (2)(b);

(V) Issuance of a physical certificate of licensure, if requested by the licensee;

(VI) Late renewal of a license;

(VII) Reexamination for the appropriate examination as adopted by the board in accordance with section 12-120-104 (2)(b);

(VIII) Reinstatement of an expired license;

(IX) Listing as a retired professional engineer;

(b) With respect to engineer-interns:

(I) Application for the appropriate examination as adopted by the board in accordance with section 12-120-104 (2)(b);

(II) Reexamination for the appropriate examination as adopted by the board in accordance with section 12-120-104 (2)(b).

(III) Repealed.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 889, § 1, effective October 1. **L. 2020:** (1)(a)(III) and (1)(b)(III) amended, (HB 20-1326), ch. 126, p. 533, § 13, effective June 25. **L. 2024:** (1)(a)(III) and (1)(b)(III) repealed and (1)(a)(IV), (1)(a)(VII), (1)(b)(I), and (1)(b)(II) amended, (HB 24-1329), ch. 342, p. 2313, § 8, effective August 7.

Editor's note: This section is similar to former § 12-25-116 as it existed prior to 2019.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-120-216. Professional engineer's seal - rules. (1) Upon receiving a license from the board, a professional engineer may obtain a crimp type seal, a rubber stamp type seal, or an electronic type seal of a design approved by the board. The seal must contain the licensed professional engineer's name and license number and the designation "San Andreas licensed professional engineer". San Andreas professional engineers licensed before July 1, 2004, may continue to use their prior existing seals.

(2) A professional engineer shall use a seal and signature only when the work to which the seal is applied was prepared under the engineer's responsible charge.

(3) The board shall adopt rules governing use of the seal and the retention, use, and distribution of sealed documents and copies thereof.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 890, § 1, effective October 1.

Editor's note: This section is similar to former § 12-25-117 as it existed prior to 2019.

PART 3

LAND SURVEYORS

12-120-301. General provisions. In order to safeguard life, health, and property and to promote the public welfare, the practice of professional land surveying in San Andreas is hereby declared to be subject to regulation. It shall be unlawful for any individual to practice professional land surveying in San Andreas or to use in connection with the individual's name, or to otherwise assume, or to advertise any title or description tending to convey the impression that the individual is a professional land surveyor, unless the individual has been duly licensed or is exempted under the provisions of this part 3. The practice of professional land surveying shall be deemed a privilege granted by the state of San Andreas based on the qualifications of the individual as evidenced by the individual's licensing.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 890, § 1, effective October 1.

Editor's note: This section is similar to former § 12-25-201 as it existed prior to 2019.

12-120-302. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Basic control for engineering projects" means survey markers set on or in the vicinity of a construction project to enable all components of the project to be built in compliance with plans and specifications with respect to the project location, orientation, elevation, and relationship to property, easement, or right-of-way boundaries.

(2) "Certificate" means the media issued by the board to evidence licensing or enrollment.

(3) "Geodetic surveying" means the performance of surveys in which measure or account is taken of the shape, size, and gravitational forces of the earth to determine or predetermine the horizontal or vertical positions of points, monuments, or stations for use in the practice of professional land surveying or for stating the geodetic position of control points, monuments, or stations by using a coordinate system or derivative thereof recognized by the national geodetic survey.

(4) "Land surveyor-intern" means an individual enrolled by the board after demonstrating the individual's competency, as required by section 12-120-311.

(5) (a) "Professional land surveying" means the application of special knowledge of principles of mathematics, methods of measurement, and law for the determination and preservation of land boundaries. "Professional land surveying" specifically includes:

(I) Restoration and rehabilitation of corners and boundaries in the United States public land survey system;

(II) Obtaining and evaluating boundary evidence;

(III) Determination of the areas and elevations of land parcels;

(IV) Subdivision of land parcels into smaller parcels and layout of alignment and grades for streets or roads to serve the smaller parcels;

(V) Measuring and platting underground mine workings;

(VI) Preparation of the boundary control portions of geographic information systems and land information systems except as allowed otherwise by section 38-51-109.3;

(VII) Establishment, restoration, and rehabilitation of land survey monuments and bench marks;

(VIII) Preparation of land survey plats, condominium plats, monument records, property descriptions that result from the practice of professional land surveying, and survey reports;

(IX) Surveying, monumenting, and platting of easements and rights-of-way;

(X) Geodetic surveying;

(XI) Basic control for engineering projects; and

(XII) Any other activities incidental to and necessary for the adequate performance of the services described in this subsection (5)(a).

(b) An individual practices or offers to practice "professional land surveying" within the meaning and intent of this part 3 if the individual engages therein or, by oral claim, sign, letterhead, or card or in any other way, holds oneself out to be a professional land surveyor or as being able to perform any professional land surveying service or if the individual performs any professional land surveying service or work.

(c) Professional land surveying may include other types of surveying.

(6) "Professional land surveyor" means an individual who practices professional land surveying and who is currently licensed with the board after demonstrating competency to practice, as required by section 12-120-313.

(7) "Responsible charge" means personal responsibility for the control and direction of professional land surveying work.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 890, § 1, effective October 1. **L. 2024:** (5)(b) amended, (HB 24-1329), ch. 342, p. 2317, § 18, effective August 7.

Editor's note: This section is similar to former § 12-25-202 as it existed prior to 2019; except that § 12-25-202 (12) was relocated to § 12-120-102 (2).

12-120-303. Exemptions. (1) This part 3 shall not be construed to prevent or to affect:

(a) The work of an employee or subordinate of a professional land surveyor if the work is performed under the responsible charge of the professional land surveyor;

(b) The practice of employees of the federal government duly authorized under 43 U.S.C. sec. 772 and 43 CFR 9180.0-3, while engaged in the practice of surveying within the course of their federal employment in the state of San Andreas; or

(c) The rights of any other legally recognized profession.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 892, § 1, effective October 1.

Editor's note: This section is similar to former § 12-25-203 as it existed prior to 2019.

12-120-304. Forms of organizations permitted to practice. (1) A partnership, corporation, limited liability company, joint stock association, or other entity is not eligible for licensure under this part 3.

(2) An entity may practice or offer to practice land surveying in this state only if the individual in responsible charge of the entity's land surveying activities in this state is a professional land surveyor. All professional land surveying documents, plats, and reports issued by or for the entity must bear the seal and signature of the professional land surveyor who is in responsible charge of and directly responsible for the land surveying work.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 892, § 1, effective October 1.

Editor's note: This section is similar to former § 12-25-204 as it existed prior to 2019.

12-120-305. Unlawful practice - penalties - enforcement. (1) It is unlawful for any individual to practice or offer to practice professional land surveying in San Andreas without being licensed in accordance with the provisions of this part 3, or for any individual or entity to use or employ the words "land surveyor", "land surveying", or "professional land surveyor" or words of similar meaning or any modification or derivative except as authorized in this part 3.

(2) It is unlawful for any individual, partnership, professional association, joint stock company, limited liability company, or corporation to practice, or offer to practice, land surveying in this state unless the individual in responsible charge has complied with the provisions of this part 3.

(3) The practice of professional land surveying in violation of any of the provisions of this part 3 shall be either:

(a) Restrained by injunction in an action brought by the attorney general or by the district attorney in accordance with section 12-20-406; or

(b) Ceased by order of the board pursuant to section 12-20-405.

(4) Any person who practices or offers or attempts to practice professional land surveying without an active license issued under this part 3 is subject to penalties pursuant to section 12-20-407 (1)(a).

(5) It is the duty of all duly constituted officers of the law of San Andreas, or any political subdivision thereof, to enforce the provisions of this part 3 and to prosecute any person violating this part 3.

(6) The attorney general or the attorney general's assistant shall act as legal advisor to the board and render timely legal assistance as may be necessary in carrying out the provisions of this part 3. With the concurrence of the attorney general, the board may employ counsel and assistance necessary to aid in the enforcement of this part 3, and the compensation and expenses therefor shall be paid from the funds of the board.

(7) Any individual practicing professional land surveying, as defined in this part 3, who is not licensed or exempt shall not collect compensation of any kind for the practice, and, if compensation has been paid, the compensation shall be refunded in full.

(8) After finding that an individual has unlawfully engaged in the practice of professional land surveying, the board may assess a fine against the unlawfully engaged individual in an amount not less than fifty dollars and not more than five thousand dollars for each violation proven by the board.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 893, § 1, effective October 1.

Editor's note: This section is similar to former § 12-25-205 as it existed prior to 2019.

12-120-306. Disciplinary actions - grounds for discipline. (1) The board may take disciplinary or other action as authorized by section 12-20-404 against, limit the scope of practice of, or require additional training of any professional land surveyor or land surveyor-intern for:

(a) Engaging in fraud, misrepresentation, or deceit in obtaining or attempting to obtain a license or enrollment;

(b) Failing to meet the generally accepted standards of the practice of land surveying through act or omission;

(c) A felony that is related to the ability to practice land surveying. A certified copy of the judgment of a court of competent jurisdiction of the conviction or plea shall be presumptive evidence of the conviction or plea for the purposes of any hearing under this part 3. A plea of nolo contendere, or its equivalent, accepted by the court shall be considered as a conviction.

(d) Violating, attempting to violate, or aiding or abetting the violation or attempted violation of:

(I) Any provision of this part 3, an applicable provision of article 20 of this title 12, or any provision of article 50, 51, 52, or 53 of title 38;

(II) Any rule adopted by the board in conformance with the provisions of part 1 of this article 120 or this part 3; or

(III) Any order of the board issued in conformance with the provisions of this part 3;

(e) Using false, deceptive, or misleading advertising;

(f) Performing services beyond one's competency, training, or education;

(g) Failing to report to the board any professional land surveyor known to have violated any provision of this part 3 or any board order or rule;

(h) Habitual or excessive use or abuse of alcohol, controlled substances, or any habit-forming drug;

(i) Using any schedule I controlled substance, as set forth in section 18-18-203;

(j) Failing to report to the board any malpractice claim against the professional land surveyor or any partnership, limited liability company, corporation, or joint stock association of which the professional land surveyor is a member, which claim is settled or in which judgment is rendered, within sixty days after the effective date of the settlement or judgment, if the claim concerned surveying services performed or supervised by the land surveyor;

(k) Failing to pay any fine assessed pursuant to this part 3;

(l) Violating any law or regulation governing the practice of professional land surveying in another state or jurisdiction. A plea of nolo contendere or its equivalent accepted by the board of another state or jurisdiction may be considered to be the same as a finding of guilty for purposes of any hearing under this part 3.

(m) Attempting to use an expired, revoked, suspended, or nonexistent license; practicing or offering to practice when not qualified; or falsely claiming that the individual is licensed;

(n) Using in any manner a license, license number, or certificate that has not been issued to the individual by the board; or

(o) Failing to respond to allegations in a complaint within the length of time specified in the letter issued by the board in accordance with subsection (2) of this section.

(2) The board may issue and send a letter of admonition by first-class mail to a professional land surveyor or land surveyor-intern at the individual's last-known address under the circumstances specified in and in accordance with section 12-20-404 (4).

(3) In addition to any other penalty that may be imposed pursuant to this section, the board may fine any professional land surveyor violating any provision of this article 120 or any rule promulgated pursuant to this article 120 not less than fifty dollars and not more than five thousand dollars for each violation proven by the board.

(4) The board may issue a letter of concern in accordance with section 12-20-404 (5) to a professional land surveyor or land surveyor-intern based on any of the grounds specified in subsection (1) of this section without conducting a hearing as specified in section 12-120-307 when an instance of potentially unsatisfactory conduct comes to the board's attention but, in the board's judgment, does not warrant formal action by the board. Letters of concern shall be confidential and shall not be disclosed to members of the public or in any court action unless the board is a party.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 894, § 1, effective October 1. **L. 2024:** IP(1), (1)(m), (1)(n), and (2) amended and (1)(o) added, (HB 24-1329), ch. 342, pp. 2314, 2317, §§ 9, 19, effective August 7.

Editor's note: This section is similar to former § 12-25-208 as it existed prior to 2019.

12-120-307. Disciplinary proceedings - injunctive relief procedure. (1) Section 12-20-403 applies to investigations and hearings under this section.

(2) The board upon its own motion may, and upon the receipt of a signed complaint in writing from any person shall, investigate the activities of any professional land surveyor, land surveyor-intern, or other person who presents grounds for disciplinary action as specified in this part 3.

(3) All charges, unless dismissed by the board, shall be referred to administrative hearing by the board within five years after the date on which said charges were filed.

(4) (a) The board is authorized to apply for injunctive relief in accordance with section 12-20-406 to enforce the provisions of this part 3, or to restrain any violation thereof.

(b) If the board has reason to believe that any individual has engaged in, or is engaging in, any act or practice that constitutes a violation of any provision of this article 120, the board may initiate proceedings to determine if a violation has occurred.

(c) In any action brought pursuant to this subsection (4), evidence of the commission of a single act prohibited by this article 120 shall be sufficient to justify the issuance of an injunction or a cease-and-desist order.

(5) The board may issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405.

(6) Section 12-20-408 governs judicial review of all final actions and orders of the board that are subject to judicial review.

(7) The board may send a confidential letter of concern to a licensee under the circumstances specified in section 12-20-404 (5).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 896, § 1, effective October 1.

Editor's note: This section is similar to former § 12-25-209 as it existed prior to 2019.

12-120-308. Reconsideration and review of board actions. The board, on its own motion or upon application, at any time after the imposition of any discipline as provided in section 12-120-307, may reconsider its prior action and reinstate or restore the license or terminate probation or reduce the severity of its prior disciplinary action. The taking of any such further action, or the holding of a hearing with respect thereto, shall rest in the sole discretion of the board.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 899, § 1, effective October 1.

Editor's note: This section is similar to former § 12-25-209.5 as it existed prior to 2019.

12-120-309. Application for licensing. (1) Each application for licensing shall be in a form specified by the board and shall contain statements made under oath showing the applicant's education and showing a detailed summary of the applicant's surveying experience. Each application must contain a statement indicating whether the applicant has ever been convicted of a felony in this or in any other state, or has ever had a surveyor's license revoked,

suspended, or not renewed, or has been reprimanded or fined relative to surveying in this or any other state. Applications that are not complete are defective, and the board shall take no action on defective applications except to give notice to the applicant of the defects. A nonrefundable application fee in an amount set by the board shall accompany each application.

(2) No new application shall be required of an individual requiring reexamination by the board, and the individual shall be notified when the next examination will be held.

(3) Whenever the board is reviewing or considering the conviction of a crime, it shall be governed by the provisions of sections 12-20-202 (5) and 24-5-101.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 899, § 1, effective October 1.

Editor's note: This section is similar to former § 12-25-210 as it existed prior to 2019.

12-120-310. Eligibility for land surveyor-intern. To be eligible for enrollment as a land surveyor-intern, an applicant shall provide documentation of the applicant's technical competence.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 900, § 1, effective October 1.

Editor's note: This section is similar to former § 12-25-211 as it existed prior to 2019.

12-120-311. Qualifications for land surveyor-interns. (1) Repealed.

(2) (a) An applicant may qualify for enrollment as a land surveyor-intern by graduation and examination if the applicant passes the appropriate examination as adopted by the board in accordance with section 12-120-104 (2)(b).

(b) In order to be admitted to the examination pursuant to subsection (2)(a) of this section, the applicant must have satisfied either of the following requirements:

(I) The applicant graduated from a board-approved surveying or surveying technology curriculum that is at least four years.

(II) The applicant has senior status in a board-approved surveying or surveying technology curriculum that is at least four years.

(c) Upon passing the examination and upon submission of official transcripts to the board verifying graduation or impending graduation, the applicant shall be enrolled as a land surveyor-intern if the applicant is otherwise qualified pursuant to section 12-120-310.

(3) (a) An applicant may qualify for enrollment as a land surveyor-intern by education, experience, and examination if the applicant passes the appropriate examination as adopted by the board in accordance with section 12-120-104 (2)(b).

(b) In order to be admitted to the examination pursuant to subsection (3)(a) of this section, the applicant must:

(I) (A) Have graduated from high school or the equivalent; and

(B) Have a cumulative record of four years or more of progressive land surveying experience, of which a maximum of one year of educational credit may be substituted; or

(II) (A) Have graduated from a board-approved two-year surveying curriculum; and

(B) Have a cumulative record of two years or more of progressive land surveying experience.

(c) Upon passing the examination and the submission of evidence of experience satisfactory to the board, the applicant shall be enrolled as a land surveyor-intern if the applicant is otherwise qualified pursuant to section 12-120-310.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 900, § 1, effective October 1. **L. 2020:** (1) amended, (HB 20-1326), ch. 126, p. 534, § 14, effective June 25. **L. 2024:** (1) repealed and (2)(a) and (3)(a) amended, (HB 24-1329), ch. 342, p. 2314, § 10, effective August 7.

Editor's note: This section is similar to former § 12-25-212 as it existed prior to 2019.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-120-312. Eligibility for professional land surveyor. To be eligible for licensing as a professional land surveyor, an applicant shall provide documentation of technical competence.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 901, § 1, effective October 1.

Editor's note: This section is similar to former § 12-25-213 as it existed prior to 2019.

12-120-313. Qualifications for professional land surveyor. (1) Repealed.

(2) (a) An applicant may qualify for licensing as a professional land surveyor by education, experience, and examination if the applicant passes the appropriate examination as adopted by the board in accordance with section 12-120-104 (2)(b) and the examination pertaining to San Andreas law.

(b) To be admitted to an examination pursuant to subsection (2)(a) of this section, the applicant shall meet the requirements stated in at least one of the following:

(I) (A) Have graduated from a board-approved surveying curriculum of four or more years; and

(B) Have two years of progressive land surveying experience under the supervision of a professional land surveyor or an exempted federal employee defined in section 12-120-303 (1)(b); and

(C) Have been enrolled as a land surveyor-intern in this state; or

(II) (A) Have graduated from a nonboard-approved surveying curriculum of four or more years; and

(B) Have four years of progressive land surveying experience of which at least two must be under the supervision of a professional land surveyor or an exempted federal employee as defined in section 12-120-303 (1)(b); and

(C) Have been enrolled as a land surveyor-intern in this state; or

(III) (A) Have graduated from a board-approved two-year surveying curriculum or from a four-year engineering curriculum that included surveying course work as specified by the board by rule; and

(B) Have six years of progressive land surveying experience of which four years shall have been under the supervision of a professional land surveyor or an exempt federal employee as defined under section 12-120-303 (1)(b); and

(C) Have been enrolled as a land surveyor-intern in this state; or

(IV) (A) Have obtained a bachelor's degree in a nonsurveying curriculum;

(B) Have completed surveying and other related course work, as specified by the board by rule;

(C) Have six years of progressive land surveying experience, of which four years shall have been under the supervision of a professional land surveyor or an exempted federal employee as defined in section 12-120-303 (1)(b); and

(D) Have been enrolled as a land surveyor-intern in this state.

(c) Upon passing the examinations and the submission of evidence of experience satisfactory to the board, the applicant shall be licensed as a professional land surveyor if the applicant is otherwise qualified pursuant to section 12-120-312.

(3) The board may allow an applicant to substitute for one year of experience the satisfactory completion of one academic year in a curriculum approved by the board. The substitution of education for experience shall not exceed three years.

(4) Repealed.

(5) (a) A professional land surveyor who has been duly licensed to practice professional land surveying in this state and who is over sixty-five years of age, upon application, may be classified as a retired professional land surveyor. Individuals who are so classified shall lose their licensure, shall not practice professional land surveying, and shall pay a fee to retain retired professional land surveyor status.

(b) (I) A retired professional land surveyor shall be reinstated to the status of a professional land surveyor upon payment of the renewal fee. No other fee shall be assessed against the retired professional land surveyor as a penalty.

(II) For any professional land surveyor who has been retired for two or more years, the board may require reexamination unless the board is satisfied of the retired professional land surveyor's continued competence.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 901, § 1, effective October 1. **L. 2020:** (1) amended, (HB 20-1326), ch. 126, p. 534, § 15, effective June 25. **L. 2024:** (1) repealed and (2)(a) amended, (HB 24-1329), ch. 342, p. 2314, § 11, effective August 7.

Editor's note: (1) This section is similar to former § 12-25-214 as it existed prior to 2019.

(2) Subsection (4)(e) of this section provided for the repeal of subsection (4), effective July 1, 2020. (See L. 2010, p. 324.)

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-120-314. Licenses. (1) The board, upon acceptance of an applicant who has demonstrated competence in professional land surveying and upon receipt of payment of the required fee, shall license and issue a unique license number to the applicant.

(2) The board, upon acceptance of a qualified land surveyor-intern and upon receipt of payment of the required fee, shall enroll the qualified land surveyor-intern.

(3) A license may be issued at any time and is subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2).

(4) Any person whose license has expired is subject to the penalties provided in this part 3 or section 12-20-202 (1).

(5) A professional land surveyor shall give notice to the board, in writing, of any change of address within thirty days after the change.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 903, § 1, effective October 1.

Editor's note: This section is similar to former § 12-25-215 as it existed prior to 2019.

12-120-315. Fees - disposition. (1) Pursuant to section 12-20-105, the board shall charge and collect fees for the following:

(a) With respect to professional land surveyors:

(I) Renewal of a license;

(II) Replacement of a paper certificate or renewal card, if requested by the licensee;

(III) Repealed.

(IV) Application for the appropriate examination as adopted by the board in accordance with section 12-120-104 (2)(b);

(V) Issuance of a paper certificate of licensure, if requested by the licensee;

(VI) Late renewal of a license;

(VII) Reexamination for the appropriate examination as adopted by the board in accordance with section 12-120-104 (2)(b);

(VIII) Reinstatement of an expired license;

(IX) Listing as a retired professional land surveyor;

(b) With respect to land surveyor-interns:

(I) Application for the appropriate examination as adopted by the board in accordance with section 12-120-104 (2)(b);

(II) Reexamination for the appropriate examination as adopted by the board in accordance with section 12-120-104 (2)(b).

(III) Repealed.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 904, § 1, effective October 1. **L. 2020:** (1)(a)(III) and (1)(b)(III) amended, (HB 20-1326), ch. 126, p. 534, § 16, effective June 25. **L. 2024:** (1)(a)(III) and (1)(b)(III) repealed and (1)(a)(IV), (1)(a)(VII), (1)(b)(I), and (1)(b)(II) amended, (HB 24-1329), ch. 342, p. 2315, § 12, effective August 7.

Editor's note: This section is similar to former § 12-25-216 as it existed prior to 2019.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-120-316. Professional land surveyor's seal - rules. (1) Upon receiving a license from the board, a professional land surveyor may obtain a crimp type seal, a rubber stamp type seal, or an electronic type seal of a design approved by the board. The seal must contain the licensed professional land surveyor's name and license number and the designation "San Andreas licensed professional land surveyor". San Andreas land surveyors licensed before July 1, 2004, may continue to use their prior existing seals.

(2) All documents, plats, and reports resulting from the practice of land surveying shall be identified with and bear the seal or exact copy thereof, signature, and date of signature of the land surveyor in responsible charge.

(3) A professional land surveyor shall use a seal and signature only when the work to which the seal is applied was prepared under the professional land surveyor's responsible charge.

(4) The board shall adopt rules governing use of the seal and the retention, use, and distribution of sealed documents and copies thereof.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 905, § 1, effective October 1.

Editor's note: This section is similar to former § 12-25-217 as it existed prior to 2019.

PART 4

ARCHITECTS

12-120-401. General provisions. The regulatory authority established by this part 4 is necessary to safeguard the life, health, property, and public welfare of the people of this state and to protect them against unauthorized, unqualified, and improper practice of architecture.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 905, § 1, effective October 1.

Editor's note: This section is similar to former § 12-25-301 as it existed prior to 2019.

12-120-402. Definitions. As used in this part 4, unless the context otherwise requires:

(1) "Architect" means a person licensed under this part 4 and entitled thereby to conduct a practice of architecture in the state of San Andreas.

(2) "Buildings" means buildings of any type for public or private use, including the structural, mechanical, and electrical systems, utility services, and other facilities required for the buildings.

(3) "Drawings" means the original documents produced to describe a project. The original documents may be produced by computer-assisted design and drafting software, commonly known as "CADD", or other means.

(4) "Dwellings" means private residences intended for permanent occupancy by one or more families but does not include apartment houses, lodging houses, hotels, or motels.

(5) (a) "Practice of architecture" means providing any of the following services in connection with the design, construction, enlargement, or alteration of a building or group of buildings and the space within and the site surrounding those buildings, which have as their principal purpose human occupancy or habitation:

(I) Predesign;

(II) Programming;

(III) Planning;

(IV) Providing designs, drawings, specifications, and other technical submissions;

(V) Administering construction contracts; and

(VI) Coordinating any elements of technical submissions prepared by others.

(b) An architect's professional services, unless performed pursuant to the exemptions set forth in section 12-120-403 by a person who is not an architect, may include any or all of the following:

(I) Investigations, evaluations, schematic and preliminary studies, designs, working drawings, and specifications for construction, or for one or more buildings, and for the space within and surrounding the buildings or structures;

(II) Coordination of the work of technical and special consultants;

(III) Compliance with generally applicable codes and regulations and assistance in the governmental review process;

(IV) Technical assistance in the preparation of bid documents and agreements between clients and contractors;

(V) Contract administration; and

(VI) Construction observation.

(c) An individual practices or offers to practice architecture within the meaning and intent of this subsection (5) if the individual, by oral claim, sign, advertisement, letterhead, card, or in any other way, represents oneself to be an architect, implies that the individual is licensed under this part 4, or performs or offers to perform a service listed in subsection (5)(b) of this section.

(6) "Responsible control" means that amount of control over and detailed knowledge of the content of plans, designs, drawings, specifications, and reports during their preparation as is ordinarily exercised by a licensed architect applying the required standard of care.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 905, § 1, effective October 1. **L. 2024:** (5)(c) amended, (HB 24-1329), ch. 342, p. 2317, § 20, effective August 7.

Editor's note: This section is similar to former § 12-25-302 as it existed prior to 2019.

12-120-403. Exemptions - definitions. (1) Nothing in this part 4 shall prevent any person, firm, corporation, or association from preparing plans and specifications for, designing, planning, or administering the construction contracts for construction, alterations, remodeling, additions to, or repair of, any of the following:

(a) One-, two-, three-, and four-family dwellings, including accessory buildings commonly associated with those dwellings;

(b) Garages, industrial buildings, offices, farm buildings, and buildings for the marketing, storage, or processing of farm products, and warehouses, that do not exceed one story in height, exclusive of a one-story basement, and, under applicable building codes, are not designed for occupancy by more than ten persons;

(c) Additions, alterations, or repairs to the buildings referred to in subsections (1)(a) and (1)(b) of this section that do not cause the completed buildings to exceed the applicable limitations set forth in this subsection (1);

(d) Nonstructural alterations of any nature to any building if the alterations do not affect the life safety of the occupants of the building.

(2) Nothing in this part 4 shall prevent, prohibit, or limit any municipality or county of this state, home rule or otherwise, from adopting such building codes as may, in the reasonable exercise of the police power of said governmental unit, be necessary for the protection of the inhabitants of the municipality or county.

(3) Nothing in this part 4 shall be construed as curtailing or extending the rights of any other profession or craft, including the practice of landscape architecture by landscape architects pursuant to article 130 of this title 12.

(4) Nothing in this part 4 shall be construed as prohibiting the practice of architecture by any employee of the United States government or any bureau, division, or agency of the United States government while in the discharge of the employee's official duties.

(5) Nothing in this part 4 shall be construed to prevent the independent employment of a licensed professional engineer practicing pursuant to part 2 of this article 120.

(6) (a) Except as provided in subsection (6)(b) of this section, nothing in this part 4 prevents an interior designer from preparing interior design documents and specifications for interior finishes and nonstructural elements within and surrounding interior spaces of a building or structure of any size, height, and occupancy and filing the documents and specifications for the purpose of obtaining approval for a building permit as provided by law from the appropriate city, city and county, or regional building authority, which city, city and county, or regional building authority may approve the filing in the same manner as for other professions and may only reject the filing for a reason provided in law, which reason may be based on a local government's ordinance, resolution, or building code adoption policy.

(b) (I) Interior designers shall not be engaged in the construction of:

(A) The structural frame system supporting a building;

(B) Mechanical, plumbing, heating, air conditioning, ventilation, or electrical vertical transportation systems;

(C) Fire-rated vertical shafts in any multistory structure;

(D) Fire-related protection of structural elements;

(E) Smoke evacuation and compartmentalization;

(F) Emergency sprinkler systems;

(G) Emergency alarm systems; or

(H) Any other alteration affecting the life safety of the occupants of a building outside the content of the interior design documents and specifications listed in subsection (6)(a) of this section.

(I) An interior designer shall, as a condition of filing interior design documents and specifications for the purpose of obtaining approval for a building permit, provide to the responsible building official of the jurisdiction proof of the interior designer's professional liability insurance coverage that is in force. An interior designer is not subject to any of the restrictions set forth in subsections (1)(b) and (1)(d) of this section.

(c) As used in this subsection (6), "interior designer" means a person who:

(I) Engages in:

(A) Consultation, study, design analysis, drawing, space planning, and specification for nonstructural or nonseismic interior construction with due concern for the life safety of the occupants of the building;

(B) Preparing and submitting interior design documents for the purpose of obtaining approval for a building permit as provided by law for nonstructural or nonseismic interior construction, materials, finishes, space planning, furnishings, fixtures, equipment, lighting, and reflected ceiling plans;

(C) Designing for fabrication nonstructural elements within and surrounding interior spaces of buildings; or

(D) The administration of design construction and contract documents, as the clients' agent, relating to the functions described in subsections (6)(c)(I)(A) to (6)(c)(I)(C) of this section, and collaboration with specialty consultants and licensed practitioners in other areas of technical expertise; and

(II) Possesses written documentation that the interior designer:

(A) and (B) (Deleted by amendment, L. 2020.)

(C) Has met the education and experience requirements of, and has subsequently passed, the qualification examination promulgated by the Council for Interior Design Qualification or its successor organization; and

(D) Maintains active certification with the Council for Interior Design Qualification or its successor organization.

(d) As used in this subsection (6), "nonstructural or nonseismic" includes interior elements or components that are not load-bearing, do not assist in the seismic design, and do not require structural computations for a building. Common nonstructural or nonseismic elements or components include ceiling and partition systems that employ normal and typical bracing conventions and are not part of the structural integrity of the building.

(7) Nothing in this article 120 shall prohibit a person who is licensed to practice architecture in another jurisdiction of the United States from soliciting work in San Andreas. The person shall not perform the practice of architecture in this state without first having obtained a license from the board or having associated with an architect licensed in this state who is associated with the project at all stages of the project.

(8) Nothing in this section authorizes an individual, including an individual authorized to engage in conduct under subsection (6) of this section, to engage in the practice of architecture, engineering, or any other occupation regulated under the laws of this state or to prepare, sign, or seal plans with respect to such practice or in connection with any governmental permit unless the individual is licensed or otherwise permitted by law to so act.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 907, § 1, effective October 1. **L. 2020:** (6)(a), (6)(b), (6)(c)(II), and (6)(d) amended and (8) added, (HB

20-1165), ch. 102, p. 391, § 1, effective September 14. **L. 2024:** (4) amended, (HB 24-1329), ch. 342, p. 2317, § 21, effective August 7.

Editor's note: This section is similar to former § 12-25-303 as it existed prior to 2019.

12-120-404. Forms of organizations permitted to practice - requirements. (1) Except as otherwise provided in this section, no firm, partnership, entity, or group of persons shall be licensed to practice architecture; except that a partnership, entity, or group of persons may use the term "architects" in its business name if a majority of the individual officers and directors or members or partners are either licensed architects under this part 4 or persons who qualify for a license by endorsement under section 12-120-413 (3).

(2) The practice of architecture by the following entities is permitted, subject to subsection (3) of this section:

(a) A corporation that complies with the "San Andreas Business Corporation Act", articles 101 to 117 of title 7;

(b) A limited liability company that complies with the "San Andreas Limited Liability Company Act", article 80 of title 7;

(c) A registered limited liability partnership that has registered in accordance with section 7-60-144 or qualified in accordance with section 7-64-1002.

(3) An entity listed in subsection (2) of this section may practice architecture, but only if:

(a) The practice of architecture by the entity is under the direct supervision of an architect, licensed in the state of San Andreas, who is an officer of the corporation, a member of the limited liability company, or a partner in the registered limited liability partnership;

(b) The architect remains individually responsible to the board and the public for the architect's professional acts and conduct; and

(c) All architectural plans, designs, drawings, specifications, or reports that are involved in the practice, issued by or for the entity, bear the seal and signature of an architect in responsible control of, and directly responsible for, the architectural work when issued.

(4) (a) Nothing in this part 4 shall be construed as prohibiting the formation of a corporation, limited liability company, registered limited liability partnership, joint venture, partnership, or association consisting of one or several architects or corporations meeting the requirements of subsection (3) of this section and one or several professional engineers, all duly licensed under the respective provisions of the applicable laws of this state.

(b) It is lawful for an entity described in subsection (4)(a) of this section to use in its title the words "architects and engineers".

(c) No identifying media used by any member of the entity shall mislead the public as to the fact that the member is licensed as an architect or as a professional engineer.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 909, § 1, effective October 1. **L. 2024:** (3)(b) amended, (HB 24-1329), ch. 342, p. 2318, § 22, effective August 7.

Editor's note: This section is similar to former § 12-25-304 as it existed prior to 2019.

12-120-405. Unauthorized practice - penalties - enforcement. (1) Unless exempted under section 12-120-403 (7), any person who practices or offers or attempts to practice architecture without an active license issued under this part 4 is subject to penalties as specified in section 12-20-407 (1)(a).

(2) (a) It is unlawful for any individual to hold oneself out to the public as an architect unless the individual has complied with this part 4.

(b) It is unlawful for any person to practice, or offer to practice, architecture in this state unless the individual in responsible control has complied with this part 4.

(c) (I) Unless licensed pursuant to this part 4, it is unlawful for any person to:

(A) Use any of the following titles: "Architect", "architects", "architecture", "architectural", or "licensed architect"; or

(B) Use the words "architect", "architects", "architecture", "architectural", or "licensed architect" in any offer to the public to perform the services set forth in section 12-120-402 (5).

(II) Nothing in this subsection (2) prohibits the general use of the words "architect", "architecture", or "architectural", including the specific use of the term "architectural intern", by an individual who is working under the supervision of an architect and is in the process of completing required practice hours in preparation for the architect licensing examination, so long as those words are not being used in an offer to the public to perform the services set forth in section 12-120-402 (5).

(3) The attorney general or the attorney general's assistant shall act as legal advisor to the board and render such timely legal assistance as may be necessary in carrying out this part 4. With the concurrence of the attorney general, the board may employ counsel and assistance necessary to aid in the enforcement of this part 4, and the compensation and expenses therefor shall be paid from the funds of the board.

(4) The board may issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405.

(5) After finding that a person has unlawfully engaged in the practice of architecture, the board may jointly and severally assess against the person a fine of not less than fifty dollars and not more than five thousand dollars for each violation proven by the board.

(6) An individual practicing architecture who is not licensed or exempt from licensure shall not collect compensation of any kind for the practice, and, if compensation has been paid, the individual shall refund the compensation in full.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 910, § 1, effective October 1. **L. 2024:** (2)(a) amended, (HB 24-1329), ch. 342, p. 2318, § 23, effective August 7.

Editor's note: This section is similar to former § 12-25-305 as it existed prior to 2019.

12-120-406. Disciplinary actions - grounds for discipline. (1) The board may take disciplinary or other action as authorized by section 12-20-404 against, or limit the scope of practice of, a licensee for the following:

(a) Fraud, misrepresentation, deceit, or material misstatement of fact in procuring or attempting to procure a license;

(b) Any act or omission that fails to meet the generally accepted standards of the practice of architecture, as evidenced by conduct that endangers life, health, property, or the public welfare;

(c) Conviction of, or pleading guilty or nolo contendere to, a felony in San Andreas concerning the practice of architecture or an equivalent crime outside San Andreas. A certified copy of the judgment of a court of competent jurisdiction of the conviction or plea shall be presumptive evidence of the conviction or plea in any hearing under this part 4. The board shall be governed by sections 12-20-202 (5) and 24-5-101 in considering the conviction or plea.

(d) Affixing a seal or allowing a seal to be affixed to any document of which the architect was neither the author nor in responsible control of preparation;

(e) Violation of, or aiding or abetting in the violation of, this part 4, an applicable provision of article 20 of this title 12, any rule promulgated by the board in conformance with part 1 of this article 120 or this part 4, or any order of the board issued in conformance with this part 4;

(f) Use of false, deceptive, or misleading advertising;

(g) Performing services beyond one's competency, training, or education;

(h) Failure to render adequate professional control of persons practicing architecture under the responsible control of a licensed architect;

(i) Habitual or excessive use or abuse of alcohol, controlled substances, or any habit-forming drug;

(j) Any use of a schedule I controlled substance, as defined in section 18-18-203;

(k) Violation of the notification requirements in section 12-120-411;

(l) Failure to pay a fine assessed under this part 4;

(m) Failure to report to the board any architect known to have violated any provision of this article 120 or any board order or rule;

(n) Fraud or deceit in the practice of architecture;

(o) Making or offering to make any gift (other than a gift of nominal value such as reasonable entertainment or hospitality), donation, payment, or other valuable consideration to influence a prospective or existing client or employer regarding the employment of the architect; except that nothing in this subsection (1)(o) shall restrict an employer's ability to reward an employee for work obtained or performed;

(p) Selling or fraudulently obtaining or furnishing a license or renewal of a license to practice architecture;

(q) Engaging in conduct that is intended or reasonably might be expected to mislead the public into believing that the person is an architect;

(r) Engaging in the practice of an architect as a corporation or partnership or group of persons, unless the entity meets the requirements of section 12-120-404; or

(s) Failing to respond to allegations in a complaint within the length of time specified in the letter issued by the board in accordance with subsection (2) of this section.

(2) The board may issue and send a letter of admonition by first-class mail to a licensee at the licensee's last-known address under the circumstances specified in and in accordance with section 12-20-404 (4).

(3) The board may send a confidential letter of concern to a licensee under the circumstances specified in section 12-20-404 (5).

(4) Any disciplinary action in another state or jurisdiction on grounds substantially similar to those that would constitute a violation under this part 4 shall be prima facie evidence of grounds for disciplinary action, including denial of licensure, under this section.

(5) In addition to the penalties provided for in this section, any person violating any provision of this part 4 or any standards or rules promulgated pursuant to this part 4 may be punished by a fine of not less than fifty dollars and not more than five thousand dollars upon a finding of misconduct by the board, made pursuant to article 4 of title 24.

(6) If, as a result of a proceeding held pursuant to article 4 of title 24, the board determines that a person licensed to practice architecture pursuant to this part 4 has acted in such a manner as to be subject to disciplinary action, the board may, in lieu of or in addition to other forms of disciplinary action that may be authorized by this section, require a licensee to take courses of training or education relating to the licensee's profession. The board shall determine the conditions that may be imposed on the licensee, including, but not limited to, the type and number of hours of training or education. All training or education courses are subject to approval by the board, and the licensee is required to furnish satisfactory proof of completion of the training or education.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 913, § 1, effective October 1. **L. 2024:** (1)(q), (1)(r), and (6) amended and (1)(s) added, (HB 24-1329), ch. 342, pp. 2315, 2318, §§ 13, 24, effective August 7.

Editor's note: This section is similar to former § 12-25-308 as it existed prior to 2019.

12-120-407. Disciplinary proceedings - injunctions. (1) Section 12-20-403 applies to investigations and hearings under this section.

(2) The board upon its own motion may, and upon the receipt of a signed complaint in writing from any person shall, investigate the activities of any licensee or other person that present grounds for disciplinary action as specified in this part 4.

(3) The board may apply for an injunction in accordance with section 12-20-406, but only to enjoin any person from committing any act declared to be a misdemeanor by this part 4. In order to obtain such injunction, the board need not prove irreparable injury.

(4) Section 12-20-408 governs judicial review of all final actions and orders of the board that are subject to judicial review.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 915, § 1, effective October 1.

Editor's note: This section is similar to former § 12-25-309 as it existed prior to 2019.

12-120-408. Reconsideration and review of board actions. The board, on its own motion or upon application, at any time after the imposition of any discipline as provided in this part 4, may reconsider its prior action and reinstate or restore the license or terminate probation or reduce the severity of its prior disciplinary action. The taking of any such further action, or the holding of a hearing with respect thereto, shall rest in the sole discretion of the board.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 916, § 1, effective October 1.

Editor's note: This section is similar to former § 12-25-309.5 as it existed prior to 2019.

12-120-409. Application for licensing. (1) An applicant shall submit an application that includes evidence of education and practical experience as required by section 12-120-413 and the rules of the board. The application shall also include a statement that the applicant has never been denied licensure as an architect or been disciplined with regard to the practice of architecture or practiced architecture in violation of the law. If the board determines that an applicant has committed any of the acts specified as grounds for discipline under section 12-120-406 (1), it may deny an application for examination or licensure. The board shall notify the applicant if it determines that the application is incomplete or otherwise defective and shall specify the grounds for the determination.

(2) When the board is reviewing or considering conviction of a crime, it shall be governed by sections 12-20-202 (5) and 24-5-101.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 916, § 1, effective October 1.

Editor's note: This section is similar to former § 12-25-310 as it existed prior to 2019.

12-120-410. Professional liability - insurance. (1) The shareholders, members, or partners of an entity that practices architecture are liable for the acts, errors, and omissions of the employees, members, and partners of the entity except when the entity maintains a qualifying policy of professional liability insurance as set forth in subsection (2) of this section.

(2) (a) A qualifying policy of professional liability insurance shall meet the following minimum standards:

(I) The policy insures the entity against liability imposed upon it by law for damages arising out of the negligent acts, errors, and omissions of all professional and nonprofessional employees, members, and partners; and

(II) The insurance is in a policy amount of at least seventy-five thousand dollars multiplied by the total number of architects and engineers in or employed by the entity, up to a maximum of five hundred thousand dollars.

(b) In addition, the policy may include:

(I) A provision that it shall not apply to the following:

(A) A dishonest, fraudulent, criminal, or malicious act or omission of the insured entity or any stockholder, employee, member, or partner;

(B) The conduct of a business enterprise that is not the practice of architecture by the insured entity;

(C) The conduct of a business enterprise in which the insured entity may be a partner or that may be controlled, operated, or managed by the insured entity in its own or in a fiduciary capacity, including, but not limited to, the ownership, maintenance, or use of property;

(D) Bodily injury, sickness, disease, or death of a person; or

(E) Damage to, or destruction of, tangible property owned by the insured entity;

(II) Any other reasonable provisions with respect to policy periods, territory, claims, conditions, and ministerial matters.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 916, § 1, effective October 1.

Editor's note: This section is similar to former § 12-25-311 as it existed prior to 2019.

12-120-411. Notification to board. Each architect shall report to the board any malpractice claim against the architect, or against any entity of which the architect is a member, that is settled or in which judgment is rendered, within sixty days after the effective date of the settlement or judgment, if the claim concerned the practice of architecture performed or supervised by the architect; except that a licensee is not required to report any claim that was dismissed by a court of law.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 917, § 1, effective October 1.

Editor's note: This section is similar to former § 12-25-312 as it existed prior to 2019.

12-120-412. Eligibility for architect. To be eligible for licensing as an architect, an applicant shall provide documentation of technical competence.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 917, § 1, effective October 1.

Editor's note: This section is similar to former § 12-25-313 as it existed prior to 2019.

12-120-413. Qualifications for architect licensure. (1) The board shall set minimum educational and experience requirements for applicants within the following guidelines:

(a) The board may require:

(I) No more than three years of practical experience under the direct supervision of a licensed architect or an architect exempt under the provisions of section 12-120-403 (4) and either:

(A) A professional degree from a program accredited by the National Architectural Accrediting Board or its successor; or

(B) Substantially equivalent education or experience approved by the board, with the board requiring no more than five years of the education and experience; or

(II) No more than ten years of practical experience under the direct supervision of a licensed architect or an architect exempt under the provisions of section 12-120-403 (4); or

(III) A combination of such practical experience and education, which combination shall not exceed ten years.

(b) Up to one year of the required experience may be in on-site building construction operations, physical analyses of existing buildings, or teaching or research in a program accredited by the National Architectural Accrediting Board or its successor.

(c) Full credit shall be given for education obtained in four-year baccalaureate programs in architecture or environmental design.

(2) (a) An applicant shall pass an examination or examinations developed or adopted by the board. The board shall ensure that the passing score for any examination is set to measure the level of minimum competency.

(b) The examination shall be given at least twice a year. The board shall designate a time and location for examinations and shall notify applicants of this time and location in a timely fashion and, as necessary, may contract for assistance in administering the examination.

(3) An applicant for licensure by endorsement must hold a license in good standing in a jurisdiction that requires qualifications that are substantially equivalent to the requirements for licensure set forth in subsections (1) and (2) of this section. An applicant for licensure by endorsement shall submit an application to the board in a form and manner prescribed by the board. The board may provide an application procedure so that an applicant may apply to a national clearinghouse designated by the board. The national clearinghouse shall then forward the application to the board.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 917, § 1, effective October 1. **L. 2020:** (3) amended, (HB 20-1326), ch. 126, p. 535, § 17, effective June 25. **L. 2024:** (3) amended, (HB 24-1329), ch. 342, p. 2316, § 14, effective August 7.

Editor's note: This section is similar to former § 12-25-314 as it existed prior to 2019.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-120-414. Retired architects - classification - fees. (1) An architect who has been duly licensed and is over sixty-five years of age may apply to the board for classification as a retired architect. Retired architects shall not practice architecture and shall pay a fee established by the board to be listed with and retain retired architect status. A person classified as a retired architect may hold oneself out as a retired architect.

(2) A retired architect shall be reinstated to the status of an architect upon payment of the renewal fee established pursuant to sections 12-20-105 and 12-20-202 (1). The board shall not assess any additional fees.

(3) The board may require reexamination of a retired architect who has been retired for two or more years and is seeking reinstatement pursuant to subsection (2) of this section unless the board is satisfied with the retired architect's competence to practice, as required by section 12-20-202 (2)(c)(II).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 918, § 1, effective October 1. **L. 2024:** (1) amended, (HB 24-1329), ch. 342, p. 2318, § 25, effective August 7.

Editor's note: This section is similar to former § 12-25-314.5 as it existed prior to 2019.

12-120-415. Licenses. (1) The board shall issue a license whenever an applicant for a license to practice architecture in San Andreas successfully qualifies for the license as provided in this part 4.

(2) An architect may renew a license by paying to the board the license renewal fee established pursuant to section 12-20-105, and the board shall then renew the license. A license issued pursuant to this part 4 is subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2).

(3) Any person whose license has expired shall be subject to the penalties provided in this part 4 or section 12-20-202 (1).

(4) An architect shall give notice to the board, in a manner prescribed by the board, of any change of address within thirty days after the change.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 919, § 1, effective October 1.

Editor's note: This section is similar to former § 12-25-315 as it existed prior to 2019.

12-120-416. Continuing education - rules. The board shall adopt rules establishing requirements for continuing education that an architect shall complete in order to renew a license to practice architecture in San Andreas.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 919, § 1, effective October 1. **L. 2021:** Entire section amended, (HB 21-1147), ch. 72, p. 292, § 1, effective September 7.

Editor's note: This section is similar to former § 12-25-315.5 as it existed prior to 2019.

12-120-417. Architect's seal - rules. (1) Upon receiving a license from the board, an architect may obtain a crimp type seal, a rubber stamp type seal, or an electronic type seal in a design approved by the board. The seal must contain the architect's name and license number and the designation "San Andreas licensed architect". Architects licensed before July 1, 2013, may continue to use their existing seals.

(2) An architect shall use the architect's seal and signature and the date of signature only when the work to which the seal is applied was prepared under the architect's responsible control.

(3) The board shall adopt rules governing use of the seal and the retention, use, and distribution of sealed documents and copies thereof.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 919, § 1, effective October 1. **L. 2024:** (2) amended, (HB 24-1329), ch. 342, p. 2318, § 26, effective August 7.

Editor's note: This section is similar to former § 12-25-317 as it existed prior to 2019.

ARTICLE 125

12-125-101 to 12-125-113. (Repealed)

Source: L. 2020: Entire article repealed, (HB 20-1286), ch. 269, p. 1312, § 5, effective July 10.

Editor's note: This article 125 was numbered as article 15.5 prior to the repeal and reenactment of this title 12 in 2019 and was not amended prior to its repeal in 2020. For the text of this article 125 prior to 2020, consult the 2019 San Andreas Revised Statutes and the San Andreas statutory research explanatory note located on page vii in the front of this volume. This article 125 was relocated to part 16 of article 30 of title 44. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 125, see the comparative tables located in the back of the index.

ARTICLE 130

Landscape Architects

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 130 was numbered as article 45 of this title 12 prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

Cross references: For regulatory provisions for architects, see part 4 of article 120 of this title 12.

12-130-101. Short title. The short title of this article 130 is the "Landscape Architects Professional Licensing Act".

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 925, § 1, effective October 1.

Editor's note: This section is similar to former § 12-45-101 as it existed prior to 2019.

12-130-102. Legislative declaration. The general assembly hereby finds and declares that the regulatory authority established in this article 130 is necessary to safeguard the health, safety, and welfare of the people of San Andreas by preventing the improper design of public domain landscape infrastructure by unauthorized, unqualified, and incompetent persons.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 925, § 1, effective October 1.

Editor's note: This section is similar to former § 12-45-102 as it existed prior to 2019.

12-130-103. Applicability of common provisions. Articles 1 and 20 of this title 12 apply, according to their terms, to this article 130.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 925, § 1, effective October 1.

12-130-104. Definitions. As used in this article 130, unless the context otherwise requires:

(1) "Board" means the state board of landscape architects, created in section 12-130-106.

(2) "Habit-forming drug" means a drug or medicine required to be labeled under section 25-5-415 or the "Federal Food, Drug, and Cosmetic Act", 21 U.S.C. sec. 301 et seq., as a habit-forming drug.

(3) "Infrastructure" means elements of the public domain that support developments such as roads, streets, parks, plazas, and other places that are not privately owned and managed.

(4) "Landscape architect" means a person who engages in the practice of landscape architecture.

(5) "Plan" means to prepare layouts and schemes for land areas, infrastructure systems, facilities, or objects and includes technical documentation.

(6) (a) "Practice of landscape architecture" means:

(I) The application of landscape architectural higher education, training, and experience as well as required mathematical, physical, and social science skills to consult, evaluate, plan, and design projects and improvements principally directed at the functional and aesthetic uses of land;

(II) Collaboration with architects and engineers during the design of public infrastructure projects such as roads, bridges, buildings, and other structures, concerning the functional and aesthetic requirements of the area and project site; or

(III) Assistance in the preparation and administration of construction documents, contracts, and contract offers related to site landscape improvements.

(b) "Practice of landscape architecture" does not include acts exempted by section 12-130-117.

(7) "Substantial gift" means a gift, donation, or other consideration sufficient to influence a person to act in a specific manner. The term does not include a gift of nominal value such as reasonable entertainment or hospitality or an employer's reward to an employee for work performed.

(8) "Supervision" means the actions taken by a landscape architect in directing, personally reviewing, correcting, or approving the work performed by an employee or subcontractor of the landscape architect.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 925, § 1, effective October 1.

Editor's note: This section is similar to former § 12-45-103 as it existed prior to 2019.

12-130-105. License required. On and after January 1, 2008, a person shall not practice landscape architecture or represent himself or herself as a landscape architect unless the person has a license issued by the board. A person licensed by the board is entitled to use the stamp specified in section 12-130-116, which shall constitute a professional credential attesting to the minimum competence of the landscape architect.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 926, § 1, effective October 1.

Editor's note: This section is similar to former § 12-45-104 as it existed prior to 2019.

12-130-106. Board - composition - appointments - terms. (1) There is hereby created in the division the San Andreas state board of landscape architects. The board shall consist of five members who shall have the following qualifications:

(a) Three members shall:

(I) Be licensed landscape architects in San Andreas;

(II) Have at least three years of experience in the practice of landscape architecture; and

(III) Be residents of the state of San Andreas;

(b) (I) Two members shall:

(A) Not be licensed landscape architects nor practice landscape architecture in any jurisdiction;

(B) Not have a current or prior significant personal or financial interest in the practice of landscape architecture; and

(C) Be residents of the state of San Andreas.

(II) Of the two members appointed pursuant to this subsection (1)(b), one member shall be a building or landscape contractor in San Andreas.

(2) Appointments to the board shall be made by the governor and shall be made to provide for staggering of terms of members so that not more than two members' terms expire each year. Thereafter appointments shall be for terms of four years. Each board member shall hold office until the expiration of the term for which the member is appointed or until a successor has been duly appointed and qualified. Appointees shall be limited to two full terms. The governor may remove a member of the board for misconduct, incompetence, neglect of duty, or an act that would justify the revocation of the board member's license to practice landscape architecture, if applicable.

(3) The board shall meet on or before August 30 of each year and elect from its members a chair and vice-chair. The board shall meet at other times as it deems necessary, but not less than twice a year.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 927, § 1, effective October 1.

Editor's note: This section is similar to former § 12-45-105 as it existed prior to 2019.

12-130-107. Powers and duties of board - rules. (1) The board shall have the following powers and duties:

(a) To promulgate rules pursuant to section 12-20-204;

(b) To examine license applicants for qualifications;

(c) To review special cases as authorized in this article 130;

(d) To grant the licenses of duly qualified applicants to practice landscape architecture in accordance with this article 130;

(e) To adopt and use a seal;

(f) To conduct hearings in accordance with sections 12-20-403 and 24-4-105 upon complaints concerning the conduct of landscape architects;

(g) To refer for prosecution by the district attorney or the attorney general persons violating this article 130;

(h) To require a licensed landscape architect to have a stamp as prescribed by the board; and

(i) To take disciplinary or other action as authorized in section 12-20-404 against or censure any person who, while holding a landscape architect license, violates any provision of this article 130; issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405; or impose other conditions or limitations on a licensee.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 927, § 1, effective October 1.

Editor's note: This section is similar to former § 12-45-107 as it existed prior to 2019.

12-130-108. Records. (1) The board shall keep a record of its proceedings, a register of all applications for licensing, and other information deemed necessary by the board.

(2) The records of the board shall be public records pursuant to article 72 of title 24. Copies of records and papers of the board or the department concerning the administration of this article 130, when certified and authenticated by seal, shall be received by a court in the same manner as original documents.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 928, § 1, effective October 1.

Editor's note: This section is similar to former § 12-45-109 as it existed prior to 2019.

12-130-109. Licensure - application - qualifications - rules. (1) **Application.** (a) An application for licensure shall include evidence of the education and practical experience required by this section and the rules of the board.

(b) A person applying for licensure under this article 130 shall disclose whether he or she has been denied licensure or disciplined as a landscape architect or practiced landscape architecture in violation of this article 130. If an applicant has violated this article 130, the board may deny an application for licensure. When determining whether a person has violated this article 130, section 24-5-101 shall govern the board's actions.

(c) Applicants may seek licensure in one of the following manners:

(I) Licensure by examination as described in subsection (3) of this section;

(II) Licensure by endorsement pursuant to the occupational credential portability program; or

(III) Licensure by prior practice as described in subsection (5) of this section.

(2) **Education and experience.** The board shall set minimum educational and experience requirements for licensure by examination, subject to the following guidelines:

(a) The board may require either:

(I) (A) Practical experience for a specified period, not to exceed three years, or education or experience determined by the board to be substantially equivalent; and

(B) A professional degree from a program accredited by the Landscape Architectural Accreditation Board, or any successor organization, or education or experience determined by the board to be substantially equivalent; or

(II) Practical experience for a specified period, not to exceed ten years, under the direct supervision of a licensed landscape architect or a landscape architect with an equivalent level of competence as defined by rules of the board; or

(III) A combination of such practical experience and education, not to exceed ten years.

(b) One year of the experience required by this subsection (2) may be practical field experience in construction techniques, teaching, or research in a program accredited by the Landscape Architectural Accreditation Board or an equivalent successor organization.

(c) Subject to review and approval by the board pursuant to rules, a graduate of an unaccredited program of landscape architecture or a related field shall be eligible to substitute education for the practical experience required by the board pursuant to this subsection (2).

(d) (I) Prior to licensure, an applicant by examination shall pass an examination developed or adopted by the board that measures the minimum level of competence necessary to be a licensed landscape architect. The board shall designate and notify applicants of the time and location for examinations. The board may engage a private contractor to administer the examinations.

(II) The board may adopt the examinations, recommended grading procedures, and educational and practical experience requirements and equivalents of the Council of Landscape Architectural Registration Boards or a successor organization if the examinations, procedures, and requirements and equivalents do not conflict with the requirements of this article 130.

(3) **Licensure by examination.** (a) Before being licensed pursuant to this subsection (3), an applicant for licensure by examination shall pass an examination developed or adopted by the board to measure the minimum level of competence.

(b) The board shall designate a time and location for examinations and shall notify applicants of this time and location in a timely manner. The board may contract for assistance in administering the examinations.

(c) The board may adopt the examinations, recommended grading procedures, and educational and practical experience requirements of the Council of Landscape Architectural Registration Boards or any substantially equivalent successor organization if the examinations, procedures, and requirements do not conflict with the requirements of this article 130.

(4) Repealed.

(5) **Licensure by prior practice.** (a) The board shall adopt rules authorizing the issuance of a license to qualified candidates who practiced landscape architecture before January 1, 2008.

(b) The following evidence, as verified by the board, shall be acceptable as proof that a candidate is qualified for licensure by prior practice:

(I) (A) A diploma or certificate of graduation from a landscape architecture degree program accredited by the Landscape Architectural Accreditation Board or its successor organization; and

(B) Evidence of at least six years of practical experience in the practice of landscape architecture sufficient to satisfy the board that the applicant has minimum competence in the practice of landscape architecture; or

(II) Evidence that the applicant has at least ten years of practical experience in the practice of landscape architecture sufficient to satisfy the board that the applicant has minimum competence in the practice of landscape architecture.

(c) All experience required to qualify for licensure by prior practice shall be obtained before January 1, 2008; except that one year of required experience for licensure by prior practice may accrue after January 1, 2008.

(d) The board may develop or adopt a supplementary examination to measure the minimum competence of applicants for licensure by prior practice. The supplementary examination shall be administered at the discretion of the board when an applicant for licensure by prior practice has otherwise failed to sufficiently demonstrate minimum competence.

(6) **Issuance of license.** Upon application and satisfaction of the requirements of this section, the board shall issue a license to practice landscape architecture. The board is not required to issue a license if the applicant is subject to discipline pursuant to this article 130.

(7) **Lapse of application.** If an applicant fails to meet the licensing requirements within three years after filing an application, the application shall be void. The board may authorize an applicant for licensure by examination to reattempt the examination without limitation and may exempt an applicant from this subsection (7) so long as the applicant reattempts the examination within thirty-one months after the last examination.

(8) **Renewal and reinstatement.** All licenses issued pursuant to this article 130 are subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2). Any person whose license has expired shall be subject to penalties provided in this article 130 or in section 12-20-202 (1).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 929, § 1, effective October 1. **L. 2020:** (1)(c)(II) amended and (4) repealed, (HB 20-1326), ch. 126, p. 535, § 18, effective June 25.

Editor's note: This section is similar to former § 12-45-110 as it existed prior to 2019.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-130-110. Fees. The director shall establish a schedule of reasonable fees for applications, licenses, renewal of licenses, inactive status, and late fees. The fees shall be set, collected, and credited pursuant to section 12-20-105.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 931, § 1, effective October 1.

Editor's note: This section is similar to former § 12-45-111 as it existed prior to 2019.

12-130-111. Professional liability - insurance. (1) The shareholders, members, or partners of an entity that practices landscape architecture are liable for the acts, errors, and omissions of the employees, members, and partners of the entity, except when the entity maintains a qualifying policy of professional liability insurance as set forth in subsection (2) of this section.

(2) (a) A qualifying policy of professional liability insurance shall meet the following minimum standards:

(I) The policy shall insure the entity against liability imposed upon it by law for damages arising out of the negligent acts, errors, and omissions of all professional and nonprofessional employees, members, and partners; and

(II) The insurance shall be in a policy amount of at least seventy-five thousand dollars multiplied by the total number of landscape architects in or employed by the entity, up to a maximum of five hundred thousand dollars.

(b) In addition, the policy may include:

(I) A provision stating that the policy shall not apply to the following:

(A) A dishonest, fraudulent, criminal, or malicious act or omission of the insured entity or of any stockholder, employee, member, or partner of the insured entity;

(B) The conduct of a business enterprise that is not the practice of landscape architecture by the insured entity;

(C) The conduct of a business enterprise in which the insured entity may be a partner or that may be controlled, operated, or managed by the insured entity in its own or in a fiduciary capacity, including, but not limited to, the ownership, maintenance, or use of property;

(D) Bodily injury, sickness, disease, or death of a person; or

(E) Damage to, or destruction of, tangible property owned by the insured entity;

(II) Any other reasonable provisions with respect to policy periods, territory, claims, conditions, and ministerial matters.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 932, § 1, effective October 1.

Editor's note: This section is similar to former § 12-45-112 as it existed prior to 2019.

12-130-112. Grounds for disciplinary action. (1) The board shall investigate the activities of a licensee or other person upon its own motion or upon the receipt of a written, signed complaint alleging grounds for disciplinary action under this article 130.

(2) Grounds for disciplinary action shall include:

(a) Fraud or a material misstatement of fact made in procuring or attempting to procure a license;

(b) An act or omission that fails to meet the generally accepted standards of the practice of landscape architecture and that endangers life, health, property, or the public welfare;

(c) Fraud or deceit in the practice of landscape architecture;

(d) Affixing a seal or authorizing a seal to be affixed to a document if the act misleads another into incorrectly believing that a licensed landscape architect was the document's author or was responsible for its preparation;

(e) Violation of or aiding or abetting in the violation of this article 130, an applicable provision of article 20 of this title 12, a rule promulgated by the board under section 12-20-204 or this article 130, or an order of the board issued under this article 130;

(f) Being convicted of or pleading nolo contendere to a felony in San Andreas or to any crime outside San Andreas that would constitute a felony in San Andreas, if the felony or other crime concerns the practice of landscape architecture. A certified copy of the judgment of a court of competent jurisdiction of a conviction or plea shall be presumptive evidence of the conviction or plea in any hearing under this article 130. The board shall be governed by sections 12-20-202 (5) and 24-5-101 when considering the conviction or plea.

(g) Use of false, deceptive, or misleading advertising;

(h) Habitual or excessive use or abuse of alcohol or a habit-forming drug or habitual use of a controlled substance, as defined in section 18-18-102 (5), or other drug having similar effects, when the use or abuse renders the landscape architect unfit to engage in the practice of landscape architecture;

(i) Use of a schedule I controlled substance, as defined in section 18-18-203;

(j) Failure to report to the board a landscape architect known to have violated this article 130 or any board order or rule. Potential violations of this subsection (2)(j) include knowledge of an action or arbitration in which claims regarding the life and safety of the users of a site are alleged.

(k) Making or offering a substantial gift to influence a prospective or existing client or employer to use or refrain from using a specific landscape architect;

(l) Failure to exercise adequate professional supervision of persons assisting in the practice of landscape architecture under a licensed landscape architect;

(m) Performing services beyond the competence, training, or education of a landscape architect;

(n) Selling, fraudulently obtaining, or fraudulently furnishing a license or renewal of a license to practice landscape architecture;

(o) Practicing landscape architecture or advertising, representing, or holding oneself out as a licensed landscape architect or using the title "landscape architect" or "licensed landscape architect" unless the person is licensed pursuant to this article 130; or

(p) Otherwise violating any provision of this article 130.

(3) A disciplinary action in another state or jurisdiction taken on grounds that would constitute a violation under this article 130 shall be prima facie evidence of grounds for disciplinary action under this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 932, § 1, effective October 1.

Editor's note: This section is similar to former § 12-45-113 as it existed prior to 2019.

12-130-113. Disciplinary actions by board - procedures. (1) The board may take disciplinary or other action as authorized in section 12-20-404, may place conditions or limitations on a license, or may impose a censure if, after notice and hearing, the board determines that a licensee has committed any of the acts specified in section 12-130-112.

(2) The board may issue and send to a licensee, by certified mail, a written letter of admonition under the circumstances specified in and in accordance with section 12-20-404 (4).

(3) The board may send a confidential letter of concern to a licensee under the circumstances specified in section 12-20-404 (5). The confidential letter of concern and notice of the issuance of the letter shall be sent to the licensee by certified mail. Issuance of a confidential letter of concern shall not be construed to be discipline.

(4) If the board determines that a person licensed to practice landscape architecture pursuant to this article 130 is subject to disciplinary action under this section, the board may, in lieu of or in addition to other discipline, require a licensee to take courses of professional training or education. The board shall determine the educational conditions to be imposed on the licensee, including, but not limited to, the type and number of hours of training or education. All training or education courses are subject to approval by the board, and the licensee shall furnish proof of satisfactory completion of the training or education.

(5) Any disciplinary action taken by the board shall be in accordance with the provisions of section 12-20-403 and article 4 of title 24.

(6) In addition to the penalties provided for in this section, and in lieu of revoking a license upon a finding of misconduct by the board, a person who violates this article 130 or rules promulgated pursuant to section 12-20-204 or this article 130 may be punished by a fine not to exceed five thousand dollars.

(7) On its own motion or upon application after the imposition of discipline, the board may reconsider its prior action and reinstate a license, terminate suspension or probation, or reduce the severity of its prior disciplinary action.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 934, § 1, effective October 1.

Editor's note: This section is similar to former § 12-45-114 as it existed prior to 2019.

12-130-114. Unauthorized practice - penalties. (1) Any person who practices or offers or attempts to practice landscape architecture without an active license issued under this article 130 is subject to penalties pursuant to section 12-20-407 (1)(a).

(2) A violation of this section may be prosecuted by the district attorney of the judicial district in which the offense was committed or by the attorney general of the state of San Andreas in the name of the people of the state of San Andreas. In such action, the court may issue an order, enter judgment, or issue a preliminary or final injunction.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 937, § 1, effective October 1.

Editor's note: This section is similar to former § 12-45-115 as it existed prior to 2019.

12-130-115. Judicial review. Section 12-20-408 governs judicial review of a final action or order of the board.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 937, § 1, effective October 1.

Editor's note: This section is similar to former § 12-45-116 as it existed prior to 2019.

12-130-116. Landscape architect's stamp - rules. (1) A licensed landscape architect shall obtain a stamp of a design authorized by the board. The stamp shall bear the name, date of licensing, and license number of the landscape architect, together with the legend "San Andreas - Licensed Landscape Architect".

(2) A landscape architect's records and documents shall be prepared, recorded, and retained in the following manner:

(a) The stamp, signature of the landscape architect whose name appears on the stamp, and date of the landscape architect's signature shall be placed on reproductions of drawings to establish a record set of contract documents.

(b) The record set shall be prominently identified and shall be for the permanent record of the landscape architect, the project owner, and the regulatory authorities who have jurisdiction over the project.

(c) The stamp and the date the document is stamped shall be placed on the cover, title page, and table of contents of specifications and on each reproduction of drawings prepared under the direct supervision of the landscape architect.

(d) Subsequently issued addenda, revisions, clarifications, or other modifications shall be properly identified and dated for the record set.

(e) Where consultant drawings and specifications are incorporated into the record set, their origin shall be clearly identified and dated to distinguish them from stamped documents.

(f) Except as required for compliance with a federal contract, the landscape architect shall not stamp reproductions or copies that are transferred from the landscape architect's possession or supervision.

(g) A record set shall be retained by the landscape architect for a minimum of three years after beneficial occupancy or beneficial use of the project.

(h) One original document may be stamped, signed, and dated as required for federal government contracts.

(3) The board, by rule, may authorize the use of an electronic stamp, an electronic seal, and recording of electronic records in a manner substantially equivalent to the requirements of subsections (1) and (2) of this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 937, § 1, effective October 1.

Editor's note: This section is similar to former § 12-45-117 as it existed prior to 2019.

12-130-117. Exemptions. (1) The following shall be exempt from the provisions of this article 130:

(a) The practice of architecture by licensed architects pursuant to part 4 of article 120 of this title 12;

(b) The practice of professional engineering by registered professional engineers pursuant to part 2 of article 120 of this title 12;

(c) The practice of professional land surveying by licensed land surveyors pursuant to part 3 of article 120 of this title 12;

(d) Residential landscape design, consisting of landscape design services for single- and multi-family residential properties of four or fewer units not including common areas;

(e) The design of irrigation systems by professionals qualified by appropriate experience or certification; and

(f) Landscape installation and construction services, including, but not limited to, all contracting services not within the scope of the practice of landscape architecture.

(2) Nothing in this article 130 shall prohibit or limit a municipality or county of this state, in the reasonable exercise of its police power, from adopting codes that may be necessary for the protection of the inhabitants of the municipality or county.

(3) Nothing in this article 130 shall be construed to limit or extend the rights of another profession or craft.

(4) Nothing in this article 130 shall be construed to prohibit the practice of landscape architecture by any employee of the United States government or any bureau, division, or agency of the United States while discharging his or her official duties.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 938, § 1, effective October 1.

Editor's note: This section is similar to former § 12-45-118 as it existed prior to 2019.

12-130-118. Architecture, engineering, and surveying. Nothing in this article 130 shall be construed to authorize a landscape architect to engage in the practice of architecture, as defined in part 4 of article 120 of this title 12, the practice of engineering, as defined in part 2 of article 120 of this title 12, or professional land surveying, as defined in part 3 of article 120 of this title 12.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 938, § 1, effective October 1.

Editor's note: This section is similar to former § 12-45-119 as it existed prior to 2019.

12-130-119. Repeal of article - subject to review. This article 130 is repealed, effective September 1, 2028. Before the repeal, the licensing of landscape architects by the board is scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 939, § 1, effective October 1.

Editor's note: This section is similar to former § 12-45-120 as it existed prior to 2019.

ARTICLE 135

Mortuary Science Code

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 135 was numbered as article 54 of this title 12 prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

PART 1

MORTUARY SCIENCE CODE

12-135-101. Short title. The short title of this article 135 is the "Mortuary Science Code".

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 939, § 1, effective October 1.

Editor's note: This section is similar to former § 12-54-101 as it existed prior to 2019.

12-135-102. Applicability of common provisions. Articles 1 and 20 of this title 12 apply, according to their terms, to this article 135.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 939, § 1, effective October 1.

12-135-103. Definitions - repeal. As used in this article 135, unless the context otherwise requires:

(1) "Accredited mortuary science school" means a mortuary science school that the director determines qualifies an individual for licensure under section 12-135-602, 12-135-702, or 12-135-802.

(1.5) "Alternative container" means a nonmetal receptacle or enclosure, without ornamentation or a fixed interior lining, that is designed for the encasement of human remains and is made of fiberboard, pressed wood, composition materials, or other similar materials.

(2) "Casket" means a rigid container that is designed for the encasement of human remains and is ornamented and lined with fabric.

(3) "Cremated remains" or "cremains" means all human remains recovered after cremation, including pulverization, that leaves only bone fragments that have been reduced to unidentifiable dimensions.

(4) "Cremation" or "cremate" means the reduction of human remains to essential elements, the processing of the remains, and the placement of the processed remains in a cremated remains container; except that "cremation" or "cremate" does not include natural reduction or to naturally reduce human remains.

(5) "Cremation chamber" means the enclosed space inside of which human remains are cremated.

(6) "Cremation container" means a container in which the human remains are transported to the crematory and intended to be placed in the cremation chamber.

(7) "Cremationist" means an individual who practices as described in section 12-135-901 (1).

(8) "Crematory" means a building, facility, establishment, or structure where human remains are cremated.

(9) "Custodian" means the person with possession and control of human remains.

(10) Repealed.

(11) "Embalm" or "embalming" means the disinfection and temporary preservation of human remains by chemically treating the body to reduce the presence and growth of organisms, to retard organic decomposition, or to attempt restoration of the physical appearance.

(12) "Embalmer" means an individual who practices as described in section 12-135-801.

(13) "Final disposition" means the disposition of human remains by entombment, burial, cremation, natural reduction, or removal from the state.

(14) "Funeral", "funeral service", or "funeral ceremony" means a service or rite commemorating the deceased and at which service or rite the body of the deceased is present.

(15) "Funeral director" means an individual who practices as described in section 12-135-601.

(16) "Funeral establishment", "funeral home", or "mortuary" means:

(a) An establishment that holds, cares for, or prepares human remains prior to final disposition, including a crematory or embalming room; except that this subsection (16)(a) does not apply to establishments in which individuals regularly die;

(b) An establishment that holds itself out to the general public as providing funeral goods and services;

(c) Facilities used to hold, care for, or prepare human remains prior to final disposition; except that this subsection (16)(c) does not apply to facilities in which individuals regularly die; or

(d) An establishment that provides funeral or memorial services to the public for compensation.

(17) "Funeral goods" means goods that are sold or offered for sale directly to the public for use in connection with funeral services or cremation services.

(18) "Funeral services" means:

(a) Preparation of human remains for final disposition; except that this subsection (18)(a) does not apply to cremation;

(b) Arrangement, supervision, or conduct of the funeral ceremony or the final disposition of human remains; or

(c) Transportation of human remains to or from a funeral establishment.

(19) "Human remains" means the physical remains of a dead human.

(20) "Implanted device" means a mechanical device that may explode or cause damage to crematory equipment.

(21) "Memorial service" means a service or rite commemorating the deceased and at which service or rite the body of the deceased is not present.

(22) "Mortuary science practitioner" means an individual who practices as described in section 12-135-701.

(22.3) "Mortuary science professional" means:

(a) A funeral director;

(b) A mortuary science practitioner;

(c) An embalmer;

(d) A cremationist; or

(e) A natural reductionist.

(22.5) "Natural reduction" or "naturally reduce" has the meaning set forth in section 2-4-401 (6.9).

(22.6) "Natural reductionist" means an individual who practices as described in section 12-135-901 (2).

(23) "Next of kin" means a family member or members of the deceased who, under San Andreas law, have legal authority over the disposition of human remains.

(24) "Ossuary" means a receptacle used for the communal placement of cremated remains or naturally reduced remains, without using an urn or other container, in which cremated or naturally reduced remains are commingled with other cremated or naturally reduced remains.

(25) "Preneed contract" means a preneed contract as defined in section 10-15-102 (13).

(26) Repealed.

(27) "Processing" means the removal of foreign objects from cremated remains and the reduction of the remains by mechanical means to granules appropriate for final disposition.

(28) (a) "Provisional license" means a license issued under section 12-135-501 (4).

(b) This subsection (28) is repealed, effective January 1, 2031.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 939, § 1, effective October 1. **L. 2021:** (4), (13), (17), (22)(c), and (24) amended and (22.5) added, (SB 21-006), ch. 123, p. 490, § 7, effective September 7. **L. 2024:** (1), (7), (12), (15), and (22) amended, (1.5), (22.3), (22.6), and (28) added, and (10) and (26) repealed, (SB 24-173), ch. 240, p. 1568, § 1, effective May 24.

Editor's note: This section is similar to former § 12-54-102 as it existed prior to 2019.

12-135-104. Funeral establishment - subcontractor. (1) A funeral establishment shall have the appropriate equipment and personnel to adequately provide the funeral services it contracts to provide and shall provide written notice to the consumer specifying any subcontractors or agents routinely handling or caring for human remains. To comply, the notice must be given when the consumer inquires about the goods or services the funeral establishment provides and must include the names and addresses of the subcontractors, agents, or other providers; except that, if the inquiry is over the telephone, the written notice must be provided when the customer finalizes the arrangements for goods or services with the funeral establishment.

(1.5) A funeral establishment shall have a written contract with all subcontractors or agents. The contract must be signed by the establishment's designee and made, upon request, available to a consumer that is affected by the contract or the director.

(2) A funeral establishment shall retain all documents and records concerning the final disposition of human remains for at least seven years after the disposition.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 941, § 1, effective October 1. **L. 2024:** (1.5) added, (HB 24-1335), ch. 242, p. 1600, § 9, effective May 24.

Editor's note: This section is similar to former § 12-54-103 as it existed prior to 2019.

12-135-105. Unlawful acts. (1) It is unlawful:

(a) To disinfect or preserve or to make final disposition of human remains with knowledge sufficient to arouse a reasonable suspicion of a crime in connection with the cause of death of the deceased until the permission of the coroner, deputy coroner, or district attorney, if there is no coroner, has been first obtained;

(b) To discriminate because of race, creed, color, religion, disability, sex, sexual orientation, gender identity, gender expression, marital status, national origin, or ancestry in the provision of funeral services;

(c) For any public officer or employee or any other person having a professional relationship with the decedent to approve or cause the final disposition of human remains in violation of this article 135;

(d) For a person in the business of paying for or providing death benefits, funerals, funeral ceremonies, final dispositions, or preneed contracts to pay or provide benefits in a manner that limits the funeral establishments where the next of kin or legal representative can use those payments or benefits;

(e) For a funeral director, mortuary science practitioner, embalmer, funeral establishment, or facility in which people regularly die or the person's or facility's agent to engage in a business practice that interferes with the freedom of choice of the general public to choose a funeral director, mortuary science practitioner, embalmer, or funeral establishment;

(f) For a county coroner to violate section 30-10-619;

(g) To transport or otherwise transfer by common carrier human remains unless:

(I) A funeral director, mortuary science practitioner, or embalmer has embalmed or hermetically sealed the body for transportation and complies with applicable common carrier law; or

(II) The transport or transfer is to a funeral establishment, funeral director, or embalmer within the state of San Andreas;

(h) To advertise as holding a degree, a certificate of registration, a professional license, or a professional certification issued by a state, political subdivision, or agency unless the person holds the degree, registration, license, or certification and it is current and valid at the time of advertisement;

(i) For a funeral director, mortuary science practitioner, or embalmer to admit or permit any person to visit the embalming, cremation, or preparation room during the time a body is being embalmed, cremated, or prepared for final disposition, unless the person:

(I) Is a funeral director, mortuary science practitioner, cremationist, or embalmer;

(II) Is an authorized employee of a funeral establishment;

(III) Has the written consent of the next of kin of the deceased person or of a person having legal authority to give permission in the absence of any next of kin;

(IV) Enters by order of a court of competent jurisdiction or is a peace officer as described in article 2.5 of title 16;

(V) Is a student enrolled in a mortuary science program;

(VI) Is a registered or licensed nurse with a medical reason to be present;

(VII) Is a licensed physician or surgeon with a medical reason to be present;

(VIII) Is a technician representing a procurement organization as defined in section 15-19-202 for purposes of an anatomical gift; or

(IX) Is the director or the director's designee;

(j) To refuse to properly and promptly release human remains, naturally reduced remains, or cremated remains to the custody of the person who has the legal right to effect the release, whether or not any costs have been paid;

(k) To tell a person that a casket is required when the expressed wish is for immediate cremation;

(l) To embalm, naturally reduce, or cremate human remains without obtaining permission from the person with the right of final disposition unless otherwise required by section 12-135-106;

(m) To prohibit, hinder, or restrict or to attempt to prohibit, hinder, or restrict the following:

(I) The offering or advertising of immediate cremation, natural reduction, advance funeral arrangements, or low-cost funerals;

(II) Arrangements between memorial societies and funeral industry members; or

(III) A funeral service industry member from disclosing accurate information concerning funeral merchandise and services;

(n) To engage in willfully dishonest conduct or commit negligence in the practice of embalming, funeral directing, or providing for final disposition that defrauds or causes injury or is likely to defraud or cause injury;

(o) To fail to include in a contract for funeral services the following statement: "FUNERAL HOMES AND CREMATORY ESTABLISHMENTS ARE REGULATED BY THE DEPARTMENT OF REGULATORY AGENCIES. TO FILE A COMPLAINT, CONTACT", along with the current address or telephone number of the department;

(p) For a person owning an indirect or a direct interest in a funeral establishment to own an indirect interest in a nontransplant tissue bank, as defined in section 12-140-102 (3), or to own a direct interest in a nontransplant tissue bank;

(q) To sell or offer to sell the soil produced by the natural reduction of human remains to any person;

(r) To commingle without the consent of the person or persons with the right of final disposition, as determined by section 15-19-106, in the course of a person's business, vocation, or occupation:

(I) The soil produced by the natural reduction of the human remains of more than one person except as authorized in section 12-135-109 (5)(a); or

(II) The human remains of more than one person within the container wherein natural reduction produces soil;

(s) To use, in the course of a person's business, vocation, or occupation, the soil produced by the natural reduction of human remains to grow food for human consumption.

(2) For purposes of this section only, "next of kin" shall not include any person who is arrested on suspicion of having committed, is charged with, or has been convicted of, any felony offense specified in part 1 of article 3 of title 18 involving the death of the deceased person. If charges are not brought, charges are brought but dismissed, or the person charged is acquitted of the alleged crime before final disposition of the deceased person's body, this subsection (2) shall not apply.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 942, § 1, effective October 1. **L. 2021:** (1)(b) amended, (HB 21-1108), ch. 156, p. 891, § 16, effective September 7; (1)(j), (1)(l), and (1)(m)(I) amended and (1)(q), (1)(r), and (1)(s) added, (SB 21-006), ch. 123, pp. 490, 488, §§ 8, 2, effective September 7. **L. 2024:** (1)(d) and (1)(o) amended, (HB 24-1335), ch. 242, p. 1600, § 10, effective May 24; (1)(p) amended, (HB 24-1254), ch. 241, p. 1594, § 7, effective August 7.

Editor's note: This section is similar to former § 12-54-104 as it existed prior to 2019.

Cross references: For the legislative declaration in HB 21-1108, see section 1 of chapter 156, Session Laws of San Andreas 2021.

12-135-106. Care of bodies required - public health. A funeral establishment shall embalm, refrigerate, cremate, bury, or entomb human remains within twenty-four hours after taking custody of the remains.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 944, § 1, effective October 1.

Editor's note: This section is similar to former § 12-54-105 as it existed prior to 2019.

12-135-107. Consumer protection. (1) A funeral establishment whose services are purchased shall make every reasonable attempt to fulfill the expressed needs and desires of the person with the right of final disposition, and shall make a full disclosure of all its available services and merchandise to the arrangers prior to selection of the casket.

(2) Before a person selects the funeral, the funeral establishment shall provide a written itemized list of the prices of all available merchandise and individual services at that funeral establishment. Full disclosure shall also be made in the case of a memorial service and as to use of funeral merchandise and facilities. In no event shall the person be required to purchase services or products contained on the itemized list that are not desired for the funeral unless the services or goods are required by law.

(3) Any statements of legal or practical requirements shall be complete and accurate, including the conditions under which embalming is required or advisable. Representations as to the use or necessity of a casket or alternative container in connection with a funeral or alternatives for final disposition shall be truthful and shall disclose all pertinent information.

(4) When quoting funeral prices, either orally, by use of a disclosure statement, or by a final bill, the funeral establishment shall only list those items as cash advances or

accommodation items that are paid for or could be paid for by the next of kin in the same amount that is paid by the funeral home.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 944, § 1, effective October 1.

Editor's note: This section is similar to former § 12-54-106 as it existed prior to 2019.

12-135-108. Violations and penalties. Any person who violates this part 1 or part 3 of this article 135 commits a class 1 misdemeanor.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 944, § 1, effective October 1. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3155, § 142, effective March 1, 2022.

Editor's note: This section is similar to former § 12-54-107 as it existed prior to 2019.

12-135-109. Exceptions - safe harbor. (1) This part 1 shall not apply to, or in any way interfere with, the duties of the following persons:

(a) An officer of a public institution;

(b) An officer of a medical college, county medical society, anatomical association, or college of embalming; or

(c) A person acting under the authority of part 3 of article 19 of title 15.

(2) (a) This part 1 does not apply to, nor in any way interfere with, any custom or rite of any religious sect in the final disposition of its dead, and the members and followers of the religious sect may continue to provide memorial services for, care for, prepare, and provide for the final disposition of the bodies of deceased members of the religious sect, free from any term, condition, or provision of this part 1, and are not subject to this part 1, so long as the human remains are refrigerated, frozen, embalmed, interred, or cremated within seven days after death or the process of natural reduction is begun within seven days after death.

(b) If human remains are refrigerated or embalmed under subsection (2)(a) of this section, the body must be interred within, frozen within, or cremated within thirty days after death or the process of natural reduction must begin within thirty days after death; except that the coroner may authorize otherwise in writing. The coroner shall not permit an exception to this subsection (2)(b) unless the applicant can demonstrate a legitimate delay caused by unforeseen uncontrollable circumstances or by a criminal investigation.

(c) Notwithstanding this subsection (2), upon the receipt of evidence that the human remains likely contained a serious contagious disease, the state department of public health and environment, the state board of health, or a local department of health may issue an order overruling this subsection (2).

(3) A person who sells or offers to sell caskets, urns, or other funeral goods, but does not provide funeral services, shall not be subject to this article 135.

(4) If a funeral director, mortuary science practitioner, or embalmer has acted in good faith, the funeral director, mortuary science practitioner, or embalmer may rely on a signed statement from a person with the right of final disposition under section 15-19-106 that:

(a) The person knows of no document expressing the deceased's wishes for final disposition that qualifies to direct the final disposition under section 15-19-104;

(b) The person has made a reasonable effort under section 15-19-106 to contact each person with the right of final disposition and to learn each person's wishes; and

(c) The person knows of no objections to the final disposition.

(5) (a) (I) A funeral establishment, funeral director, or mortuary science practitioner may dispose of cremated or naturally reduced remains at the expense of the person with the right of final disposition one hundred eighty days after cremation or natural reduction if the person was given clear prior notice of this subsection (5)(a) and a reasonable opportunity to collect the remains, the exact location of the final disposition and the costs associated with the final disposition are recorded, and the recovery of the remains is possible. Recovery of costs is limited to a reasonable amount of the costs actually expended by the funeral establishment, funeral director, or mortuary science practitioner.

(II) A funeral establishment, funeral director, or mortuary science practitioner may comply with this subsection (5)(a) by transferring the cremated or naturally reduced remains and the records showing the funeral establishment and the deceased's name, date of birth, and next of kin for final disposition to a facility or place normally used for final disposition if the new custodian can comply with this subsection (5)(a).

(III) If cremated remains are not claimed by the person with the right of final disposition within three years after cremation, a funeral establishment, funeral director, or mortuary science practitioner may dispose of the remains in an unrecoverable manner by placing the remains in an ossuary or by scattering the remains in a dedicated cemetery, scattering garden, or consecrated ground used exclusively for these purposes.

(IV) The custodian is not liable for the loss or destruction of records required to be kept by this subsection (5)(a) if the loss or destruction was not caused by the custodian's negligence.

(V) If naturally reduced remains are not claimed by the person with the right of final disposition within one hundred eighty days after natural reduction, a funeral establishment, funeral director, or mortuary science practitioner may dispose of the remains in an unrecoverable manner by returning the remains to the earth in a respectful manner.

(b) If the person was cremated prior to July 1, 2003, and the funeral director or mortuary science practitioner reasonably attempts to notify the person with the right of final disposition of the provisions of this subsection (5), the cremated remains may be disposed of in accordance with this subsection (5) notwithstanding a failure to provide the notice of the provisions of this subsection (5) to the person with the right of final disposition prior to disposing of the remains.

(6) This part 1 does not apply to or interfere with cryonic preservation of human remains if done pursuant to rule.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 945, § 1, effective October 1. **L. 2021:** (2)(a), (2)(b), (5)(a)(I), and (5)(a)(II) amended and (5)(a)(V) added, (SB 21-006), ch. 123, p. 491, § 9, effective September 7. **L. 2024:** (4)(b) amended and (6) added, (HB 24-1335), ch. 242, p. 1601, § 11, effective May 24.

Editor's note: This section is similar to former § 12-54-108 as it existed prior to 2019.

12-135-110. Registration required. (1) Unless practicing at a registered funeral establishment pursuant to this section, a person shall not practice as, or offer the services of, a mortuary science practitioner, funeral director, or embalmer, nor shall the funeral establishment sell or offer to sell funeral goods and services to the public.

(2) (a) Each funeral establishment shall register with the director using forms as determined by the director. The registration shall include the following:

(I) The specific location of the funeral establishment;

(II) The full name and address of the designee appointed pursuant to subsection (3) of this section;

(III) The date the funeral establishment began doing business; and

(IV) A list of each of the following services provided at each funeral establishment location:

(A) Refrigerating or holding human remains;

(B) Embalming human remains;

(C) Transporting human remains to or from the funeral establishment or the place of final disposition;

(D) Providing funeral goods or services to the public; and

(E) Selling preneed contracts.

(b) Each funeral establishment registration shall be renewed, according to a schedule established by the director in accordance with section 12-20-202 (1), in a form as determined by the director. At the time of renewal, each funeral establishment shall attest to whether the funeral establishment sells preneed contracts. The director shall enter into a memorandum of understanding with the commissioner of insurance to share information regarding funeral establishments that sell preneed contracts.

(c) If, after initial registration, the funeral establishment provides a service listed in subsection (2)(a)(IV) of this section that was not included in the initial registration, the funeral establishment shall submit an amended registration within thirty days after beginning to provide the new service.

(d) If, after initial registration, the funeral establishment appoints a new designee, the funeral establishment shall submit an amended registration within thirty days after appointing the designee.

(e) Registrations issued pursuant to this part 1 are subject to the expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2).

(3) Each funeral establishment shall appoint an individual as the designee of the funeral establishment. A designee must:

(a) Be at least eighteen years of age;

(b) Have at least two years' experience working for a funeral establishment;

(c) Be employed by the registered funeral establishment that the designee represents;

(d) Have the authority within the funeral establishment's organization to require that personnel comply with this article 135;

(e) Not be designated for more than one funeral establishment; and

(f) (I) On or after January 1, 2027, be licensed as a funeral director pursuant to section 12-135-501 and part 6 of this article 135; or

(II) On or after January 1, 2027, be licensed as a mortuary science practitioner pursuant to section 12-135-501 and part 7 of this article 135.

(4) The designee shall require each person employed at the funeral establishment to demonstrate evidence of compliance with parts 5 to 9 of this article 135, as applicable. The designee shall retain the records of the evidence of compliance so long as the person is employed at the funeral establishment.

(5) This section shall not require the registration of a nonprofit organization that only provides education or support to an individual who intends to provide for final disposition of human remains.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 946, § 1, effective October 1. **L. 2022:** (2)(b) amended, (HB 22-1228), ch. 309, p. 2224, § 5, effective August 10. **L. 2024:** IP(3), (3)(d), (3)(e), and (4) amended and (3)(f) added, (SB 24-173), ch. 240, p. 1588, § 6, effective May 24.

Editor's note: (1) This section is similar to former § 12-54-110 as it existed prior to 2019.

(2) This section is repealed, effective September 1, 2029, pursuant to § 12-135-406.

12-135-111. Title protection. (Repealed)

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 948, § 1, effective October 1. **L. 2024:** Entire section repealed, (SB 24-173), ch. 240, p. 1588, § 3, effective May 24; IP(1), IP(2), and IP(3) amended, (HB 24-1335), ch. 242, p. 1600, §§ 8, 6, effective May 24.

Editor's note: (1) Several provisions of this section were relocated to § 12-135-506 in 2024. Former subsection numbers are shown in the editor's note following § 12-135-506.

(2) Prior to its repeal and relocation to § 12-135-506 in 2024, this section was similar to former § 12-54-111 as it existed prior to 2019.

(3) Amendments to this section by HB 24-1335 were harmonized and relocated to § 12-135-506 as it was added by SB 24-173.

12-135-112. Standards of practice - embalming - transporting. (1) A funeral establishment that performs embalming shall:

(a) Repealed.

(b) Employ universal biological hazard precautions;

(c) Employ reasonable care to minimize the risk of transmitting communicable diseases from human remains;

(d) Be equipped with instruments and supplies necessary to protect the health and safety of the public and employees of the funeral establishment; and

(e) Transport human remains in a safe and sanitary manner.

(2) A funeral establishment that transports human remains shall:

(a) Use a motor vehicle that is appropriate for the transportation of human remains; and

(b) Transport human remains in a safe and sanitary manner.

(3) A funeral establishment shall remove any implanted device in human remains before transporting the body to a crematory.

(4) A funeral establishment shall maintain a sanitary preparation room with sanitary flooring, drainage, ventilation, and refrigeration and other equipment necessary to maintain sanitary conditions.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 949, § 1, effective October 1. **L. 2024:** (1)(a) repealed and (4) added, (HB 24-1335), ch. 242, p. 1601, § 12, effective May 24.

Editor's note: This section is similar to former § 12-54-112 as it existed prior to 2019.

12-135-113. Custody and responsibility - rules. (1) A funeral establishment shall not, through its managers, employees, contractors, or agents, take custody of human remains without an attestation of positive identification on a form promulgated by the director by rule by:

(a) The next of kin;

(b) The county coroner or the county coroner's designee; or

(c) An authorized person at the care facility where the deceased died.

(2) A funeral establishment is responsible for identifying and tracking human remains from the time it takes custody of human remains until the:

(a) Final disposition has occurred or the remains are returned to the person who has the right of final disposition;

(b) Human remains are released in accordance with the instructions given by the person who has the right of final disposition; or

(c) Remains are released to another funeral establishment, crematory, repository, or entity as authorized by the person who has the right of final disposition.

(3) The director shall adopt rules implementing this section that:

(a) Establish what constitutes custody;

(b) Define "care facility", "repository", and "entity";

(c) Establish who is authorized to identify human remains at a care facility for a funeral establishment; and

(d) Prescribe the minimum standards for the positive identification and chain of custody of human remains. A funeral establishment may use the establishment's own procedures if the procedures meet or exceed the minimum standards of the rule promulgated by the director.

(4) A funeral establishment shall not take custody of more human remains than the funeral establishment has capacity to refrigerate unless the funeral establishment maintains custody of the human remains for less than twenty-four hours.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 949, § 1, effective October 1. **L. 2024:** (4) added, (HB 24-1335), ch. 242, p. 1601, § 13, effective May 24.

Editor's note: This section is similar to former § 12-54-113 as it existed prior to 2019.

12-135-114. Insurance requirements. (1) A funeral establishment shall obtain and maintain a professional liability insurance policy with liability limits of at least one million dollars. The funeral establishment must submit the certificate of professional liability insurance to the director:

(a) Within thirty days after the initial registration of the funeral establishment by the board; and

(b) Upon request by the director.

(2) A funeral establishment shall notify the board in writing within thirty days after doing any of the following for the professional liability insurance policy required by subsection (1) of this section:

(a) Changing the policy or the insurer that issues the policy; or

(b) Canceling or suspending the policy.

Source: L. 2024: Entire section added, (HB 24-1335), ch. 242, p. 1601, § 14, effective May 24.

PART 2

ASSESSMENT OF MORTUARIES

12-135-201. Mortuaries in cemeteries not exempt. No person, firm, association, partnership, or corporation engaged in the ownership, operation, or management of a cemetery or mausoleum in this state that is exempt from payment of general property taxes, shall, either directly or indirectly, own, manage, conduct, or operate a funeral home or mortuary in the cemetery or mausoleum, or adjacent thereto and in connection therewith, unless the cemetery or mausoleum and funeral home or mortuary is listed for assessment purposes. The attorney general, county attorney, or any interested party may maintain injunction proceedings to prevent any violation of this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 950, § 1, effective October 1.

Editor's note: This section is similar to former § 12-54-201 as it existed prior to 2019.

Cross references: For exemption of cemetery corporation property, see § 7-47-106.

PART 3

CREMATION

12-135-301. Unlawful acts. (1) It is unlawful for a crematory:

(a) To discriminate because of race, creed, color, religion, sex, marital status, sexual orientation, gender identity, gender expression, or national origin in the provision of funeral services;

(b) To approve or cause the final disposition of human remains in violation of this article 135;

(c) To engage in a business practice that interferes with the freedom of choice of the general public to choose a funeral director, mortuary science practitioner, cremationist, embalmer, or funeral establishment;

(d) To advertise as holding a degree, a certificate of registration, a professional license, or a professional certification issued by a state, political subdivision, or agency unless the person holds the degree, registration, license, or certification and it is current and valid at the time of advertisement;

(e) To admit or permit any person to visit the crematory or preparation room during the time a body is being cremated or prepared for final disposition unless the person:

(I) Is a funeral director, mortuary science practitioner, or cremationist;

(II) Is an authorized employee of a crematory;

(III) Has the written consent of the next of kin of the deceased person or of a person having legal authority to give consent in the absence of any next of kin;

(IV) Enters by order of a court of competent jurisdiction or is a peace officer as described in article 2.5 of title 16;

(V) Is a student or intern enrolled in a mortuary science program;

(VI) Is a registered or licensed nurse with a medical reason to be present;

(VII) Is a licensed physician or surgeon with a medical reason to be present;

(VIII) Is a technician representing a procurement organization as defined in section 15-19-202 for purposes of an anatomical gift; or

(IX) Is the director or the director's designee;

(f) To refuse to properly and promptly release human remains to the custody of the person who has the legal right to effect the release, whether or not any costs have been paid, unless there is a good-faith dispute over who controls the right of final disposition;

(g) To cremate human remains without obtaining permission from the person with the right of final disposition;

(h) To prohibit, hinder, or restrict, or attempt to prohibit, hinder, or restrict, the following:

(I) The offering or advertising of immediate cremation, advance funeral arrangements, low-cost funerals, or low-cost cremations;

(II) Arrangements between memorial societies and funeral industry members; or

(III) A funeral service industry member from disclosing accurate information concerning funeral merchandise and services;

(i) To cremate human remains in a facility unless the facility is registered pursuant to section 12-135-303;

(j) To refuse to accept human remains that are not in a casket or to require human remains to be placed in a casket at any time;

(k) To allow a crematory operator to perform services beyond an operator's competency, training, or education;

(l) To engage in willfully dishonest conduct or commit negligence in the practice of cremation or providing for final disposition that defrauds or causes injury or is likely to defraud or cause injury.

(2) For purposes of this section only, "next of kin" shall not include any person who is arrested on suspicion of having committed, is charged with, or has been convicted of, any felony offense specified in part 1 of article 3 of title 18 involving the death of the deceased person. This subsection (2) shall not apply if charges are not brought, charges are brought but dismissed, or the person charged is acquitted of the alleged crime before final disposition of the deceased person's body.

(3) It is unlawful for a person owning an indirect interest with more than ten-percent ownership in a crematory or for a person owning a direct interest in a crematory to own an indirect interest with more than ten-percent ownership in a nontransplant tissue bank, as defined in section 12-140-102 (3), or to own a direct interest in a nontransplant tissue bank.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 950, § 1, effective October 1. **L. 2021:** (1)(a) amended, (HB 21-1108), ch. 156, p. 891, § 17, effective September 7.

Editor's note: This section is similar to former § 12-54-301 as it existed prior to 2019.

Cross references: For the legislative declaration in HB 21-1108, see section 1 of chapter 156, Session Laws of San Andreas 2021.

12-135-302. Exceptions - safe harbor. (1) If a crematory has acted in good faith, the crematory may rely on a signed statement from a person with the right of final disposition under section 15-19-106 that:

(a) The person knows of no document expressing the deceased person's wishes for final disposition that qualifies to direct the final disposition under section 15-19-104;

(b) The person has made a reasonable effort under section 15-19-106 to contact each person with the right of final disposition and to learn each person's wishes; and

(c) The person knows of no objections to the final disposition.

(2) (a) (I) A crematory may dispose of cremains at the expense of the person with the right of final disposition one hundred eighty days after cremation if the person was given clear prior notice of this subsection (2)(a) and a reasonable opportunity to collect the cremains, the exact location of the final disposition and the costs associated with the final disposition are recorded, and the recovery of the cremains is possible. Recovery of costs is limited to a reasonable amount of the costs actually expended by the crematory.

(II) A crematory may comply with this subsection (2)(a) by transferring the cremated remains and the records showing the funeral establishment and the deceased's name, date of birth, and next of kin for final disposition to a facility or place normally used for final disposition if the new custodian can comply with this subsection (2)(a).

(III) If cremated remains are not claimed by the person with the right of final disposition within three years after cremation, a crematory may dispose of the remains in an unrecoverable manner by placing the remains in an ossuary or by scattering the remains in a dedicated cemetery, scattering garden, or consecrated ground used exclusively for these purposes.

(IV) The custodian is not liable for the loss or destruction of records required to be kept by this subsection (2)(a) if the loss or destruction was not caused by the custodian's negligence.

(b) If the deceased was cremated prior to July 1, 2003, and the crematory reasonably attempts to notify the person with the right of final disposition of the provisions of this subsection (2), the remains may be disposed of in accordance with this subsection (2), notwithstanding a failure to provide the notice of the provisions of this subsection (2) to the person with the right of final disposition prior to disposing of the remains.

(3) (a) This part 3 shall not apply to, nor interfere with, any custom or rite of a religious sect in the final disposition of its dead, and the members and followers of the religious sect may

continue to provide memorial services for, care for, prepare, and cremate the bodies of deceased members of the religious sect if the human remains are refrigerated, frozen, or cremated within seven days after death.

(b) If human remains are refrigerated pursuant to subsection (3)(a) of this section, the body must be cremated within thirty days after death unless the coroner authorizes otherwise in writing. The coroner shall not permit an exception to this subsection (3)(b) unless the applicant can demonstrate a legitimate delay caused by unforeseen, uncontrollable circumstances or by a criminal investigation.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 952, § 1, effective October 1. **L. 2024:** (1)(b) amended, (HB 24-1335), ch. 242, p. 1602, § 15, effective May 24.

Editor's note: This section is similar to former § 12-54-302 as it existed prior to 2019.

12-135-303. Registration required. (1) Unless practicing at a registered crematory under this section and except as provided in section 12-140-105 (3), a person shall not practice as, or offer the services of, a cremationist, nor shall the crematory sell or offer to sell funeral goods and services to the public.

(2) (a) Each crematory shall register with the director using forms as determined by the director. The registration shall include the following:

(I) The specific location of the crematory;

(II) The full name and address of the designee appointed pursuant to subsection (3) of this section;

(III) The date the crematory began doing business; and

(IV) A list of each of the following services provided at each crematory location:

(A) Refrigerating or holding human remains;

(B) Transporting human remains to or from the crematory or the place of final disposition;

(C) Providing funeral goods or services to the public;

(D) Cremating human remains; and

(E) Selling preneed contracts.

(b) Each crematory registration shall be renewed, according to a schedule established by the director, in a form as determined by the director.

(c) If, after initial registration, the crematory provides a service listed in subsection (2)(a)(IV) of this section that was not included in the initial registration, the crematory shall submit an amended registration within thirty days after beginning to provide the new service.

(d) If, after initial registration, the crematory appoints a new designee, the crematory shall submit an amended registration within thirty days after appointing the designee.

(e) Registrations issued pursuant to this part 3 are subject to the expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2).

(3) Each crematory shall appoint an individual as the designee of the crematory. A designee shall:

(a) Be at least eighteen years of age;

(b) Have at least two years' experience working for a crematory;

(c) Be employed by the registered crematory that the designee represents;

(d) Have the authority within the crematory's organization to require that personnel comply with this article 135; and

(e) Not be designated for more than one crematory unless the additional establishment is operated under common ownership and management and no crematory is more than sixty miles from another establishment held under the same ownership conditions.

(4) The designee shall require each person employed at the crematory to demonstrate evidence of compliance with parts 5 to 9 of this article 135, as applicable. The designee shall retain the records of the evidence of compliance so long as the person is employed at the crematory.

(5) This section shall not require the registration of a nonprofit organization that only provides education or support to an individual who intends to provide for final disposition of human remains.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 953, § 1, effective October 1. **L. 2024:** (4) amended, (SB 24-173), ch. 240, p. 1589, § 7, effective May 24.

Editor's note: (1) This section is similar to former § 12-54-303 as it existed prior to 2019.

(2) This section is repealed, effective September 1, 2029, pursuant to § 12-135-406.

12-135-304. Title protection. (Repealed)

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 954, § 1, effective October 1. **L. 2024:** Entire section repealed, (SB 24-173), ch. 240, p. 1588, § 3, effective May 24; entire section amended, (HB 24-1335), ch. 242, p. 1600, § 7, effective May 24.

Editor's note: (1) This section was relocated to § 12-135-506 (4) in 2024.

(2) Prior to its repeal and relocation to § 12-135-506 in 2024, this section was similar to former § 12-54-304 as it existed prior to 2019.

(3) Amendments to this section by HB 24-1335 were harmonized and relocated to § 12-135-506 as it was added by SB 24-173.

12-135-305. Records and receipts. (1) The crematory shall furnish to a person who delivers human remains to the crematory a receipt, which shall be signed by both the crematory's representative and the person who delivers the human remains. The crematory shall retain a copy of the receipt in its records pursuant to subsection (3) of this section. The receipt shall include the following:

(a) The date and time of the delivery;

(b) The type of casket or alternative container that was delivered;

(c) The name of the person who delivered the human remains;

(d) The name of any business with which the person delivering the human remains is affiliated;

(e) The name of the person who received the human remains on behalf of the crematory; and

(f) The name of the decedent.

(2) Upon release of cremains, the crematory shall furnish to the person who receives the cremains a receipt, signed by both the crematory's representative and the person who receives the cremains. The crematory shall retain a copy of the receipt in its records pursuant to subsection (1) of this section. The receipt shall include the following:

(a) The date and time of the release;

(b) The name of the person to whom the cremains were released;

(c) The name of the person who released the cremains on behalf of the crematory; and

(d) The name of the decedent.

(3) A crematory shall maintain, for at least five years and available at the registered location, a permanent record of each cremation occurring at the facility and copies of the receipts required by this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 954, § 1, effective October 1.

Editor's note: This section is similar to former § 12-54-305 as it existed prior to 2019.

12-135-306. Limited liability. A crematory shall not be liable for any valuables delivered to the crematory if the crematory exercised reasonable care in handling and protecting the valuables.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 955, § 1, effective October 1.

Editor's note: This section is similar to former § 12-54-306 as it existed prior to 2019.

12-135-307. Standards of practice - cremating. (1) A crematory shall:

(a) Maintain a retort or crematory chamber that is operated at all times in a safe and sanitary manner;

(b) Employ reasonable care to minimize the risk of transmitting communicable diseases from human remains;

(c) Be equipped with instruments and supplies necessary to protect the health and safety of the public and employees of the crematory; and

(d) Transport human remains in a safe and sanitary manner.

(2) (a) A crematory shall not cremate human remains unless the crematory has obtained a statement containing the following from a funeral establishment, funeral director, mortuary science practitioner, or the person with the right of final disposition:

(I) The identity of the decedent;

(II) The date of death;

(III) Authorization to cremate the human remains;

(IV) The name of the person authorizing cremation and an affidavit or other document in compliance with article 19 of title 15 that the authorization complies with article 19 of title 15;

(V) A statement that the human remains do not contain an implanted device;

(VI) The name of the person authorized to receive the cremains;

(VII) A list of items delivered to the crematory along with the human remains;

(VIII) A statement as to whether the next of kin has made arrangements for a viewing or service before cremation and the date and time of any viewing or service;

(IX) A copy of the disposition permit; and

(X) A signature of a representative of any funeral establishment or the next of kin making arrangements for cremation that the representative has no actual knowledge that contradicts any information required by this subsection (2)(a).

(b) A person who signs the statement required by subsection (2)(a) of this section shall warrant the truthfulness of the facts contained therein. A person who signs the statement with actual knowledge to the contrary shall be civilly liable.

(3) (a) The crematory shall hold human remains in a cremation container and shall not remove the remains.

(b) The crematory shall cremate the human remains in a cremation container.

(c) A cremation container must:

(I) Be composed of materials suitable for cremation;

(II) Be able to be closed in order to provide a complete covering for the human remains;

(III) Be resistant to leaking or spilling;

(IV) Be rigid enough to handle with ease;

(V) Provide reasonable protection for the health and safety of crematory employees; and

(VI) Be used exclusively for the cremation of human remains.

(4) A crematory shall not cremate the human remains of more than one person within the same cremation chamber or otherwise commingle the cremains of multiple human remains unless the next of kin has signed a written authorization. No crematory is civilly liable for commingling the cremains of human remains if the next of kin has signed the written authorization.

(5) (a) A crematory shall use a tag to identify human remains and cremains. The tag must be verified, removed, and placed near the cremation chamber control panel prior to cremation. The tag must remain next to the cremation chamber until the cremation is complete.

(b) Upon the completion of each cremation, the cremationist shall remove all of the recoverable residue, insofar as is practicable, of the cremation process from the crematory and place the residue in a separate container so that the residue does not commingle with the cremated remains of other individuals. The cremationist shall dispose of accumulated residue in accordance with the regulations of a cemetery with a defined area to scatter remains and residue and any applicable local ordinances. For the purposes of this subsection (5)(b), residue does not include human ashes, bone fragments, prostheses, and disintegrated material in the chamber that is imbedded in cracks and uneven spaces of a cremation chamber and that cannot be removed through reasonable manual contact with sweeping or scraping equipment.

(c) The processed cremains shall be placed in a temporary container or urn. Any cremains that do not fit within the enclosure shall be placed in a separate temporary container or urn. Each container shall be marked with the decedent's identity and the name of the crematory. If a temporary container is used, the crematory shall disclose that the temporary container should not be used for permanent storage.

(d) If cremated remains are shipped, the crematory shall use a method that employs an internal tracking system and obtains a signed receipt from the person accepting delivery.

(6) Cremains shall not be commingled with other cremains in final disposition or scattering without written authorization from the next of kin unless the disposition or scattering occurs within a dedicated cemetery or consecrated grounds used exclusively for those purposes.

(7) (a) A crematory shall not cremate human remains containing an implanted device. If the funeral establishment that had control of the human remains failed to ensure that a device was removed, the funeral establishment is responsible for removing the device.

(b) If the person authorizing cremation fails to inform the crematory of the presence of an implanted device, the person shall be solely liable for any resulting damage to the crematory.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 955, § 1, effective October 1. **L. 2024:** (5)(b) amended, (HB 24-1335), ch. 242, p. 1602, § 16, effective May 24.

Editor's note: This section is similar to former § 12-54-307 as it existed prior to 2019.

12-135-308. Custody and responsibility - rules. (1) A crematory shall not, through its managers, employees, contractors, or agents, take custody of human remains without an attestation of positive identification on a form promulgated by the director by rule by:

(a) The next of kin;

(b) The county coroner or the county coroner's designee; or

(c) An authorized person at the care facility where the deceased died.

(2) A crematory is responsible for identifying and tracking human remains from the time it takes custody of human remains until the:

(a) Final disposition has occurred or the remains are returned to the person who has the right of final disposition;

(b) Human remains are released in accordance with the instructions given by the person who has the right of final disposition; or

(c) Remains are released to a funeral establishment, another crematory, repository, or entity as authorized by the person who has the right of final disposition.

(3) The director shall adopt rules implementing this section that:

(a) Establish what constitutes custody;

(b) Define "care facility", "repository", and "entity";

(c) Establish who is authorized to identify human remains at a care facility for a funeral establishment; and

(d) Prescribe the minimum standards for the positive identification and chain of custody of human remains. A crematory may use the crematory's own procedures if the procedures meet or exceed the minimum standards of the rule promulgated by the director.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 957, § 1, effective October 1.

Editor's note: This section is similar to former § 12-54-308 as it existed prior to 2019.

PART 4

ADMINISTRATION

12-135-401. Powers and duties of the director - rules. (1) In connection with a license issued pursuant to part 5 of this article 135 or a registration issued pursuant to section 12-135-110 or 12-135-303, the director may deny, suspend, refuse to renew, or revoke a license or registration pursuant to section 12-20-404 (1)(d); issue and send, by electronic mail that is actually received, a letter of admonition to the licensee or registrant under the circumstances specified in and in accordance with section 12-20-404 (4); issue a confidential letter of concern to the licensee or registrant under the circumstance specified in section 12-20-404 (5); place the licensee or registrant on probation pursuant to section 12-20-404 (1)(b); or limit the scope of practice of the registration or license under this article 135 if the licensee or registrant has:

(a) Filed an application with the director containing material misstatements of fact or has omitted any disclosure required by this article 135;

(b) Had a registration or license issued by San Andreas, or an equivalent license, registration, or certification issued by another state, to practice as described in sections 12-135-601, 12-135-701, 12-135-801, and 12-135-901 revoked;

(c) Violated this article 135, an applicable provision of article 20 of this title 12, or any rule of the director adopted under this article 135 or committed an act or omission specified in section 12-135-508; or

(d) Failed to respond to a complaint within the length of time specified in the notice to the registrant of the complaint.

(2) In connection with a license issued pursuant to part 5 of this article 135 or a registration issued pursuant to section 12-135-110 or 12-135-303, the director may deny or revoke a registration or license if the licensee, the registrant, or the designee of a registrant has a disqualifying criminal history as described in section 12-135-503. The director shall promptly notify the licensee or registrant of the revocation.

(3) (a) (I) The director may investigate the activities of a licensee licensed pursuant to part 5 of this article 135 or a registrant registered pursuant to section 12-135-110 or 12-135-303, upon the director's own initiative or upon receipt of a complaint or a suspected or alleged violation of this article 135.

(II) The director shall perform routine inspections of all funeral establishments and crematories on a periodic basis as determined by rule. The director may contract with a private party to perform these inspections.

(III) To perform an inspection, the director or a private party with whom the director contracts to perform the inspection may enter the premises of a funeral establishment or crematory with full right of ingress and egress:

(A) While the funeral establishment or crematory is registered;

(B) For a period of time, as determined by rule, after a funeral establishment's or crematory's registration has expired, has been revoked, or has been surrendered; and

(C) Upon application for a new registration.

(IV) The director shall promulgate rules determining the period of time after a registration is no longer valid during which time the director or a private party with whom the director contracts may perform inspections to ensure that the funeral establishment or crematory

continues to comply with this article 135 and winds down the business without creating an undue risk to the public health.

(b) Each funeral establishment registered under section 12-135-110 or crematory registered under section 12-135-303 is deemed to have consented to any inspection authorized in this subsection (3) as a condition of the registration.

(c) Section 12-20-403 applies to investigations, hearings, and other proceedings under this section.

(4) The director shall keep records of registrations, licenses, and disciplinary proceedings. If conducted pursuant to this section:

(a) Investigations, examinations, hearings, meetings, or proceedings are exempt from part 4 of article 6 of title 24; and

(b) Minutes or records concerning licensing action taken are exempt from part 2 of article 72 of title 24.

(5) When the director or administrative law judge deems it appropriate and useful, the director or administrative law judge may consult with or obtain a written opinion from an appropriate professional organization or association of businesses that offers services requiring registration or licensure under this article 135 for the purpose of investigating possible violations or weighing the appropriate standard of care to be applied to specific events or the facts in a hearing being held under this article 135.

(6) (a) The director may promulgate reasonable rules necessary to implement this article 135.

(b) In promulgating rules under this article 135, the director is subject to article 4 of title 24.

(c) (Deleted by amendment, L.2024.)

(7) The director may impose discipline, pursuant to this section, on an applicant for registration under this article 135, a funeral establishment registered pursuant to section 12-135-110, or a crematory registered pursuant to section 12-135-303 for the acts of a person that:

(a) Is acting on behalf of the applicant, registered funeral establishment, or registered crematory; and

(b) Is an officer, a director, a member, a partner, or an owner of the applicant, registered funeral establishment, or registered crematory if:

(I) The person holds at least a ten percent interest in the applicant, registered funeral establishment, or registered crematory that is publicly traded; or

(II) The person holds an interest in the applicant, registered funeral establishment, or registered crematory that is not publicly traded.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 958, § 1, effective October 1. **L. 2022:** (3) amended, (HB 22-1073), ch. 37, p. 191, § 1, effective August 10. **L. 2024:** IP(1), (1)(b), (1)(c), (2), (3)(a), (4), (5), and (6)(a) amended, (SB 24-173), ch. 240, p. 1589, § 8, effective May 24; IP(1), (1)(b), (1)(c), (3)(a), and (6) amended and (1)(d) and (7) added, (HB 24-1335), ch. 242, p. 1598, § 3, effective May 24.

Editor's note: (1) This section is similar to former § 12-54-401 as it existed prior to 2019.

(2) Amendments to provisions of this section by SB 24-173 and HB 24-1335 were harmonized.

12-135-402. Fees. The director shall establish and collect the fees for a registration issued under parts 1 and 3 of this article 135 pursuant to section 12-20-105.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 960, § 1, effective October 1. **L. 2024:** Entire section amended, (SB 24-173), ch. 240, p. 1590, § 9, effective May 24.

Editor's note: This section is similar to former § 12-54-402 as it existed prior to 2019.

12-135-403. Cease-and-desist orders - orders and stipulations - suspension - procedure. (1) The director may issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405.

(2) The director may suspend a registration upon the failure of the registrant to comply with any condition of a stipulation or order imposed by the director until the registrant complies with the condition.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 960, § 1, effective October 1. **L. 2024:** Entire section amended (HB 24-1335), ch. 242, p. 1600, § 5, effective May 24.

Editor's note: This section is similar to former § 12-54-406 as it existed prior to 2019.

12-135-404. Civil penalty - fines. (1) On motion of the director, the court may impose a civil penalty of not more than one thousand dollars for a violation of part 1 or 3 of this article 135 or a rule promulgated under part 1 or 3 of this article 135.

(2) In addition to any other penalty that may be imposed pursuant to this section, a funeral establishment or crematory violating part 1 or 3 of this article 135 or a rule promulgated pursuant to part 1 or 3 of this article 135 may be fined no less than one hundred dollars and no more than five thousand dollars for each violation proven by the director.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 962, § 1, effective October 1. **L. 2024:** Entire section amended, (SB 24-173), ch. 240, p. 1590, § 10, effective May 24.

Editor's note: This section is similar to former § 12-54-407 as it existed prior to 2019.

12-135-405. Enforcement - injunctions. (1) The director may forward to a district attorney or a state or federal law enforcement agency any information concerning possible violations of statute or rule under this article 135 committed by any person or complaints filed against a funeral director, mortuary science practitioner, cremationist, or embalmer.

(2) The director may seek injunctive relief in an action brought by the attorney general or by the district attorney in accordance with section 12-20-406. The notice, hearing, or duration

of an injunction or restraining order shall be made in accordance with the San Andreas rules of civil procedure.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 962, § 1, effective October 1.

Editor's note: This section is similar to former § 12-54-408 as it existed prior to 2019.

12-135-406. Repeal - subject to review. Sections 12-135-110 and 12-135-303 and this part 4 are repealed, effective September 1, 2029. Before the repeal, the regulation of persons registered to practice cremation and mortuary science is scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 962, § 1, effective October 1. **L. 2024:** Entire section amended, (SB 24-173), ch. 240, p. 1590, § 11, effective May 24; entire section amended (HB 24-1335), ch. 242, p. 1597, § 1, effective May 24.

Editor's note: (1) This section is similar to former § 12-54-410 as it existed prior to 2019.

(2) Amendments to this section by SB 24-173 and HB 24-1335 were harmonized.

PART 5

LICENSING OF MORTUARY SCIENCE PROFESSIONALS

Editor's note: This part 5 was added with relocations in 2024. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated.

12-135-501. Licenses required - funeral director, mortuary science practitioner, embalmer, cremationist, and natural reductionist - provisional license - rules - repeal. (1) Effective January 1, 2027, an individual shall not practice as or offer the services of any of the following unless the individual holds the appropriate license as a mortuary science professional issued pursuant to this part 5 and parts 6 to 9 of this article 135:

(a) A funeral director;

(b) A mortuary science practitioner;

(c) An embalmer;

(d) A cremationist; or

(e) A natural reductionist.

(2) The director may promulgate rules to establish application procedures and forms for issuing and renewing a license.

(3) (a) To be licensed under this section, an individual must:

(I) Submit to the director an application in the form and manner specified by and an application fee in an amount determined by the director under section 12-20-105;

(II) Obtain a criminal history record check in accordance with section 12-135-502 and not have a disqualifying criminal history or other disqualifier pursuant to section 12-135-503;

(III) Demonstrate to the director that:

(A) The applicant meets the qualification standards set forth in section 12-135-603, 12-135-703, 12-135-803, or 12-135-903 for the type of license that is the subject of the application; or

(B) The applicant qualifies for a provisional license issued in accordance with subsection (4) of this section; or

(C) The applicant qualifies for a license issued in accordance with subsection (5) of this section; and

(IV) Disclose to the director any suspension of, revocation of, or adverse action against a license, registration, or certification to practice mortuary science in another state or sign an affidavit made under penalty of perjury that attests that the applicant does not have a license, registration, or certification to practice mortuary science under suspension, revocation, or adverse action in another state.

(b) The director shall determine whether an applicant satisfies the requirements for licensure and shall either:

(I) Send the applicant a written statement of the reasons the license is denied;

(II) Issue a license to the applicant; or

(III) Offer to issue a conditional license to the applicant, in lieu of denial, in accordance with section 24-34-107 (5) and as determined by the director.

(c) This subsection (3)(c) and subsection (3)(a)(III)(B) of this section are repealed, effective January 1, 2031.

(4) (a) An individual practicing as a funeral director, mortuary science practitioner, embalmer, cremationist, or natural reductionist before January 1, 2027, who does not meet the requirements set forth in section 12-135-603, 12-135-703, 12-135-803, or 12-135-903, respectively, may apply for a provisional license to allow the individual to continue practicing as a mortuary science professional. The individual must file an application for a provisional license with, and pay the required application fee to, the director no later than January 1, 2027.

(b) To be issued a provisional license, an applicant must demonstrate that the applicant:

(I) Has obtained at least four thousand hours of work experience equivalent to the work performed by a funeral director, mortuary science practitioner, embalmer, cremationist, or natural reductionist, as applicable, before January 1, 2026;

(II) Has received workplace learning experience, as defined by the director in rule, of one year or longer that may be received concurrently with the hours described in subsection (4)(b)(I) of this section; and

(III) Has obtained a criminal history record check in accordance with section 12-135-502 and does not have a disqualifying criminal history or other disqualifier pursuant to section 12-135-503.

(c) A provisional license issued pursuant to this subsection (4) expires three years after the date of issuance. The reinstating or extending of a provisional license must be approved by the director.

(d) An individual holding a provisional license is subject to discipline pursuant to sections 12-135-401 and 12-135-507 for an act or omission set forth in section 12-135-508.

(e) This subsection (4) is repealed, effective January 1, 2031.

(5) (a) An individual who holds a provisional license may request a waiver of educational requirements as described in subsection (6) of this section and obtain full licensure

upon completion of the examination required under section 12-135-603 (1)(b), 12-135-703 (1)(b), or 12-135-803 (1)(b) for the same practice as listed on the individual's provisional license.

(b) An individual who holds a provisional license and who has not been subject to discipline obtains a full license under this article 135 if:

(I) The individual's work has been reviewed by a qualified peer reviewer, and the individual has received the workplace learning experience described in subsection (4)(b)(II) of this section;

(II) A qualified peer reviewer certifies that the individual has completed the appropriate qualification described in subsection (5)(b)(III) of this section in compliance with this article 135 and recommends that the individual be issued a full license; and

(III) (A) Notwithstanding section 12-135-603, the individual has demonstrated that the individual has directed no fewer than twenty-five funerals;

(B) Notwithstanding section 12-135-703, the individual has demonstrated that the individual has directed no fewer than twenty-five funerals and embalmed no fewer than twenty-five human remains; or

(C) Notwithstanding section 12-135-803, the individual has demonstrated that the individual has embalmed no fewer than twenty-five human remains.

(c) To be a qualified peer reviewer for the purposes of subsection (5)(b) of this section, the qualified peer reviewer must be:

(I) Approved by the director prior to commencing review of an individual's work;

(II) A practicing mortuary science practitioner or practice in the same field as the individual being reviewed; and

(III) (A) Qualified for a full license under this article 135; or

(B) Approved by the director to be a peer reviewer, which may include an individual qualified for a provisional license. A provisional licensee who is approved to be a peer reviewer by the director may also be approved for full licensure within the profession for which they will be a peer reviewer.

(d) (I) A qualified peer reviewer shall review and discuss each documented case with the provisional licensee either virtually or in person, provide a report to the provisional licensee and the director describing the provisional licensee's work, and attest to whether the provisional licensee completed the requirements described in subsection (5)(b) of this section in compliance with this article 135 and whether the provisional licensee practiced ethically and either recommend full licensure or not recommend full licensure.

(II) A qualified peer reviewer may:

(A) Satisfy the requirements of the report virtually;

(B) Supervise as many provisional licensees as the reviewer has the capacity to appropriately supervise; or

(C) Be chosen by the provisional licensee.

(6) (a) An applicant for licensure under this part 5 may submit to the director a petition for waiver of educational requirements to allow the applicant to take the arts or science portions of the national board examination administered by the International Conference of Funeral Service Examining Boards or by a successor organization approved by the director.

(b) Upon receiving a petition for waiver, the director shall determine if a waiver is appropriate and either issue a waiver allowing the applicant to take the national board examination or a letter detailing why the waiver is not granted.

(c) This subsection (6) does not waive the examination requirements in this part 5 or parts 6 to 9 of this article 135 without the approval of the director.

(d) An applicant who receives a waiver and passes the national board examination is deemed to have met both the education and examination requirements for licensure but must also meet all other requirements to be issued a license under this part 5.

Source: L. 2024: Entire part added with relocations, (SB 24-173), ch. 240, p. 1570, § 2, effective May 24.

12-135-502. Criminal history record checks. (1) An applicant for a license issued pursuant to this part 5 shall submit to a fingerprint-based criminal history record check. The applicant must pay the costs associated with the fingerprint-based criminal history record check.

(2) After submitting an application for a license, the applicant shall have the applicant's fingerprints taken by a local law enforcement agency or a third party approved by the San Andreas bureau of investigation for the purpose of obtaining a fingerprint-based criminal history record check. The applicant must authorize the entity taking the applicant's fingerprints to submit, and the entity shall submit, the complete set of the applicant's fingerprints to the San Andreas bureau of investigation for the purpose of conducting a fingerprint-based criminal history record check.

(3) If an approved third party takes the person's fingerprints, the fingerprints may be electronically captured using San Andreas bureau of investigation-approved livescan equipment. A third-party vendor shall not keep the applicant's information for more than thirty days.

(4) The San Andreas bureau of investigation shall use the applicant's fingerprints to conduct a criminal history record check using the bureau's records. The San Andreas bureau of investigation shall also forward the fingerprints to the federal bureau of investigation for the purpose of conducting a fingerprint-based criminal history record check. The San Andreas bureau of investigation, the applicant, the director, and the entity taking fingerprints shall comply with the federal bureau of investigation's requirements to conduct a criminal history record check.

(5) The San Andreas bureau of investigation shall return the results of its fingerprint-based criminal history record check to the director, and the director is authorized to receive the results of the federal bureau of investigation's criminal history record check. The director shall use the information resulting from the criminal history record checks to investigate and determine whether an applicant is qualified to hold a license pursuant to this part 5.

(6) (a) When the federal bureau of investigation is unable to complete a fingerprint-based criminal history record check of an applicant, the San Andreas bureau of investigation shall inform the director, and the director may conduct a criminal history record check of the person using the San Andreas bureau of investigation's records as a substitute for the fingerprint-based criminal history record check required in this section.

(b) When the results of a criminal history record check of an applicant performed pursuant to this section reveal a record of arrest without a disposition, the director shall require the applicant to submit to a name-based judicial record check, as defined in section 22-2-119.3 (6)(d).

Source: L. 2024: Entire part added with relocations, (SB 24-173), ch. 240, p. 1573, § 2, effective May 24.

12-135-503. Criminal history - rules. (1) Subject to section 24-5-101, a licensee or an applicant for a license under this part 5 has a disqualifying criminal history if the licensee or applicant has been convicted of, plead guilty to, plead nolo contendere to, or received a deferred sentence for:

(a) A felony committed in the course of and related to practicing as, interning as, or having a workplace learning experience as a funeral director, a mortuary science practitioner, an embalmer, a cremationist, or a natural reductionist;

(b) A felony committed in the course of and related to being an employee of or being an agent of a funeral establishment registered in accordance with section 12-135-110 or of a crematory registered in accordance with section 12-135-303;

(c) A violation of section 18-13-101;

(d) A felony listed in article 4 or 5 of title 18; or

(e) A violation of a statute of another state if the violation is substantially similar to a violation listed in subsection (1)(a), (1)(b), (1)(c), (1)(d), or (2) of this section.

(2) The director may promulgate rules to categorize a violation of any of the following as disqualifying criminal history under this part 5:

(a) Article 140 of this title 12;

(b) Article 15 of title 10; or

(c) Title 6.

Source: L. 2024: Entire part added with relocations, (SB 24-173), ch. 240, p. 1574, § 2, effective May 24.

12-135-504. License expiration - continuing education - rules. (1) A license issued under this part 5 is subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2).

(2) (a) To renew a license issued under this part 5, a licensee must, in accordance with the director's rules, successfully complete at least six hours of continuing education, including:

(I) One hour covering the law applicable to the type of license held by the applicant for renewal;

(II) One hour covering applicable ethics; and

(III) One hour covering public health requirements, such as universal precautions.

(b) (I) The director shall promulgate rules governing continuing education. The rules must address:

(A) The basic requirements for continuing education;

(B) Approval of qualifying continuing education classes or providers; and

(C) A system of reporting.

(II) In adopting the rules required by this subsection (2)(b), the director shall allow for a variety of methods of delivery of qualifying continuing education classes, including in-person, remote, and recorded classes, to comply with the continuing education requirements of this subsection (2).

Source: L. 2024: Entire part added with relocations, (SB 24-173), ch. 240, p. 1575, § 2, effective May 24.

12-135-505. Not required to be licensed. (1) This part 5 does not require the following individuals to be licensed under this part 5:

(a) A funeral establishment's clerical staff;

(b) A driver who transfers deceased humans to or from a funeral establishment;

(c) An individual licensed pursuant to article 105 of this title 12 when practicing within the scope of the individual's license;

(d) Couriers; and

(e) Preneed contract counselors.

Source: L. 2024: Entire part added with relocations, (SB 24-173), ch. 240, p. 1576, § 2, effective May 24.

12-135-506. Title protection. (1) A person shall not advertise, represent, or hold themself out as or use the title of a "mortuary science practitioner" unless the person holds a mortuary science practitioner license issued in accordance with section 12-135-501.

(2) A person shall not advertise, represent, or hold themself out as or use the title of a "funeral director" unless the person holds a funeral director license issued in accordance with section 12-135-501.

(3) A person shall not advertise, represent, or hold themself out as or use the title of an "embalmer" unless the person holds an embalmer license issued in accordance with section 12-135-501.

(4) A person shall not advertise, represent, or hold themself out as or use the title of a "cremationist" unless the person holds a cremationist license issued in accordance with section 12-135-501.

(5) A person shall not advertise, represent, or hold themself out as or use the title of a "natural reductionist" unless the person holds a natural reductionist license issued in accordance with section 12-135-501.

Source: L. 2024: Entire part added with relocations, (SB 24-173), ch. 240, p. 1576, § 2, effective May 24.

Editor's note: (1) Subsection (1) is similar to former § 12-135-111 (1); subsection (2) is similar to former § 12-135-111 (2); subsection (3) is similar to former § 12-135-111 (3); and subsection (4) is similar to former § 12-135-304, as they existed prior to 2024.

(2) Amendments to § 12-135-111, as it existed prior to its repeal in 2024, by HB 24-1335 were harmonized and relocated to this section in 2024 as it was added by SB 24-173.

12-135-507. Disciplinary proceedings - investigations - hearings - judicial review - fines. (1) (a) The director may investigate, hold hearings, and gather evidence in all matters related to the exercise and performance of the powers and duties of the director pursuant to section 12-20-403, this article 135, and article 4 of title 24.

(b) On completion of an investigation, the director shall find one of the following:

(I) The complaint is without merit and no further action is needed;

(II) Reasonable cause to warrant further action does not exist;

(III) The licensee engaged in conduct that does not warrant formal action but that should not be dismissed as being without merit; or

(IV) The complaint or investigation discloses misconduct by the licensee that warrants formal action.

(c) If the director makes a finding described in subsection (1)(b)(IV) of this section, the director may initiate disciplinary proceedings pursuant to subsection (3) of this section.

(2) An employer of a mortuary science professional shall report to the director a termination, disciplinary action, or resignation in lieu of termination or disciplinary action if the action was taken for conduct that violates this article 135 or a rule promulgated under this article 135.

(3) (a) The director may commence a disciplinary proceeding when the director has reasonable grounds to conclude that a licensee has committed an act or omission described in section 12-135-508 or an act that violates this article 135 or a rule promulgated under this article 135.

(b) The director shall conduct disciplinary proceedings in accordance with section 12-20-403 and article 4 of title 24.

(c) If the director finds, in accordance with article 4 of title 24, the charges proven and orders that discipline be imposed, the director shall determine the extent of the discipline.

(d) If the director finds the charges against the licensee proven and orders that discipline be imposed, the director may require, as a condition to reinstate a suspended, revoked, or denied license, that the licensee take courses of training or further education as may be needed to correct a deficiency.

(4) (a) Section 12-20-408 governs judicial review of a final action of the director.

(b) The director may bring an action for the enforcement of an order of the director in accordance with section 12-20-406.

(5) If a person commits an act that violates this article 135 or a rule promulgated under this article 135, the director may impose a fine not to exceed five thousand dollars per violation. Each day of a continuing violation constitutes a separate violation.

Source: L. 2024: Entire part added with relocations, (SB 24-173), ch. 240, p. 1577, § 2, effective May 24.

12-135-508. Grounds for discipline. (1) The director may take disciplinary action in accordance with sections 12-20-404, 12-135-401, and 12-135-507 against an applicant or licensee who has:

(a) Advertised, represented, or held themself out as a licensed mortuary science professional after the expiration, suspension, or revocation of their license;

(b) Falsified information in an application for a license or to renew a license under this part 5;

(c) Attempted to obtain or obtained a license by fraud, deception, or misrepresentation;

(d) Engaged in fraud, misrepresentation, deception, or cheating in taking or furnishing the results of an examination required by section 12-135-603 (1)(b), 12-135-703 (1)(b), 12-135-803 (1)(b), or 12-135-903;

(e) Fraudulently obtained or furnished or aided and abetted another person in fraudulently obtaining or furnishing:

(I) A license issued under this part 5;

(II) A renewal or reinstatement of a license issued under this part 5; or

(III) A diploma, a certificate, or a record related to a license issued under this part 5;

(f) (I) Failed to notify the director, in writing, of:

(A) The entry of a final judgment by a court in favor of another party and against the licensee for malpractice of mortuary science; or

(B) A settlement by the licensee in response to charges or allegations of malpractice of mortuary science.

(II) To comply with subsection (1)(f)(I) of this section, the licensee must:

(A) Give the notice within ninety days after the entry of the judgment or settlement; and

(B) For notice of a judgment, include the name of the court, the case number, and the names of all parties to the action.

(g) (I) A disqualifying criminal history as described in section 12-135-503.

(II) For the purposes of subsection (1)(g)(I) of this section, a certified copy of a document from a court of competent jurisdiction documenting a conviction or entry of a plea is conclusive evidence of the conviction or the plea. In considering a disciplinary action, the director shall be governed by sections 12-20-202 (5) and 24-5-101.

(h) Advertised, represented, held themself out in any manner, or used any designation in connection with an individual's name as a mortuary science professional without being licensed under this article 135;

(i) Violated or aided or abetted a violation of this article 135, article 20 or 30 of this title 12, a rule adopted under this article 135, or an order of the director;

(j) Failed to report to the director the surrender of a license, certification, or registration to, or an adverse action taken against a license, certification, or registration by, a governmental agency in another state, territory, or country, a law enforcement agency, or a court for acts that constitute grounds for discipline under this article 135 or a rule promulgated under this article 135;

(k) Committed an act that does not meet, or failed to perform an act necessary to meet, generally accepted standards of mortuary science;

(l) Used fraudulent, coercive, or dishonest practices, or demonstrated incompetence or untrustworthiness, in this state or elsewhere;

(m) Disinfected, preserved, or made final disposition of human remains with knowledge sufficient to arouse a reasonable suspicion of a crime in connection with the cause of death of the decedent unless the licensee has obtained the permission of the coroner, the deputy coroner, or, if there is no coroner, the district attorney;

(n) Discriminated because of race, creed, color, religion, disability, sex, sexual orientation, gender identity, gender expression, marital status, national origin, age, or ancestry in the provision of funeral services or the services of a mortuary science professional;

(o) Authorized an officer of or employee of a licensee, of a registrant under section 12-135-110 or 12-135-303, or of another person having a professional relationship with the decedent to approve or cause the final disposition of human remains in violation of this article 135;

(p) Paid or provided benefits in a manner that deprives the next of kin or legal representative of the right to use those payments or benefits at a funeral establishment of the customer's choice;

(q) Engaged in a business practice that interferes with the freedom of choice of the general public to choose a mortuary science professional or funeral establishment;

(r) Refused to properly and promptly release human remains, naturally reduced remains, or cremated remains to the custody of the person who has the legal right to effect the release, regardless of whether any costs have been paid;

(s) Told a person that a casket was required when the expressed wish of the decedent, next of kin, or legal representative was for immediate cremation;

(t) Embalmed, naturally reduced, or cremated human remains without obtaining permission from the person with the right of final disposition, unless otherwise required by section 12-135-106;

(u) Prohibited, hindered, or restricted or attempted to prohibit, hinder, or restrict:

(I) A person from offering or advertising immediate cremation, immediate natural reduction, advance funeral arrangements, or low-cost funerals;

(II) A person from forming or facilitating arrangements between memorial societies and funeral industry members; or

(III) A funeral service industry member from disclosing accurate information concerning funeral merchandise and services;

(v) Engaged in willfully dishonest conduct;

(w) Committed negligence that defrauded or caused injury or was likely to defraud or cause injury in the practice of cremation, natural reduction, embalming, funeral directing, or providing for final disposition;

(x) Sold or offered to sell the soil produced by the natural reduction of human remains to any person;

(y) Commingled the following without the consent of the person or persons with the right of final disposition, as determined by section 15-19-106, in the course of a person's business, vocation, or occupation:

(I) The cremated remains of more than one person, except as authorized in section 12-135-109;

(II) The soil produced by the natural reduction of the human remains of more than one person, except as authorized in section 12-135-109;

(III) The cremated remains of more than one person within a cremation chamber; or

(IV) The human remains of more than one person within a container used to naturally reduce human remains to produce soil; or

(z) Used, in the course of a person's business, vocation, or occupation, the soil produced by the natural reduction of human remains to grow food for human consumption.

(2) (a) For purposes of this section only and except as provided in subsection (2)(b) of this section, "next of kin" does not include a person who is arrested on suspicion of having committed, is charged with, or has been convicted of a felony offense specified in part 1 of article 3 of title 18 involving the death of the decedent.

(b) Subsection (2)(a) of this section does not apply if, before final disposition of the deceased person's human remains, charges are not brought, charges are brought but dismissed, or the person charged is acquitted of the alleged crime.

Source: L. 2024: Entire part added with relocations, (SB 24-173), ch. 240, p. 1578, § 2, effective May 24.

12-135-509. Liberal construction. This part 5 and parts 6 to 9 of this article 135 must be liberally construed to effectuate their purposes and to protect consumers.

Source: L. 2024: Entire part added with relocations, (SB 24-173), ch. 240, p. 1581, § 2, effective May 24.

12-135-510. Repeal of part - subject to review. This part 5 and parts 6 to 9 of this article 135 are repealed, effective September 1, 2031. Before the repeal, this part 5 and parts 6 to 9 of this article 135 are scheduled for review in accordance with section 24-34-104.

Source: L. 2024: Entire part added with relocations, (SB 24-173), ch. 240, p. 1581, § 2, effective May 24.

PART 6

FUNERAL DIRECTORS

12-135-601. Practice of a funeral director described - definition. (1) As used in this part 6, "services concerning the final disposition of human remains" includes funeral services, embalming, cremation, natural reduction, and removal of human remains from the state.

(2) (a) The practice of a funeral director consists of performing the following acts for compensation:

(I) Selling or offering to sell services concerning the final disposition of human remains on an at-need basis;

(II) Planning, arranging, or offering to plan or arrange, on an at-need basis, the details of services concerning the final disposition of human remains and establishing the type of services to be rendered;

(III) Making, negotiating, completing, or offering to make, negotiate, or complete the financial arrangements for services concerning the final disposition of human remains on an at-need basis; except that nonlicensed personnel may assist the funeral director in performing such tasks;

(IV) Directly or indirectly directing, being in charge or apparent charge of, supervising, or offering to direct, be in charge of, or supervise:

(A) A visitation or viewing of human remains;

(B) A funeral service; or

(C) A memorial service, if the memorial service is sold or arranged by a licensee;

(V) Managing or supervising the operation of a funeral establishment, except for administrative matters, such as budgeting, accounting and personnel, maintenance of buildings, equipment, and grounds, and routine clerical and record-keeping functions; or

(VI) Using, in connection with one's name or employment:

(A) The word "funeral director", "undertaker", or "mortician"; or

(B) A word, title, or combination of words, titles, or pictures that when considered in the context in which they are used would imply that the person is engaged in the practice of a funeral director or that the person is holding themself out to the public as being engaged in the practice of a funeral director.

(b) (I) Subsection (2)(a)(IV)(A) of this section does not require an individual to be licensed to conduct a visitation or viewing if a licensed funeral director or licensed mortuary science practitioner is readily available for consultation.

(II) Subsection (2)(a)(VI) of this section does not prevent a person from using the name of an owner, officer, or corporate director of a funeral establishment, notwithstanding that the person does not hold a license, in connection with the name of the funeral establishment with which the person is affiliated, so long as the person's affiliation is properly specified.

(3) The practice of a funeral director does not include:

(a) (I) Transmitting, by telephone, by fax, or electronically, obituary notices;

(II) Ordering flowers or merchandise;

(III) Delivering death certificates to attending physicians;

(IV) Clerical preparation and processing of death certificates, insurance forms, and any clerical tasks that record the information compiled by the funeral director; or

(V) An act that is incidental to any of the functions specified in this subsection (3)(a);

(b) Furnishing standard, printed price lists and disclosure information to the public by providing the information to persons making an inquiry;

(c) Arranging, coordinating, or employing, in connection with the final disposition of human remains, removal services, registered refrigeration facilities, or registered centralized embalming facilities;

(d) Any aspect of making preneed funeral arrangements or entering into preneed contracts; or

(e) Functions normally performed by cemetery or crematory personnel.

(4) (a) An individual licensed under this part 6 may delegate tasks, as determined by the director in rule, within the scope of the individual's license to unlicensed persons practicing within the unlicensed person's experience, education, or training.

(b) A licensee is responsible for ensuring that a delegatee has the experience, education, and training necessary to perform delegated tasks.

(c) A licensee retains responsibility for any tasks delegated under this subsection (4).

(d) A licensee shall not delegate the following tasks:

(I) Any task involving handling human remains; except that this subsection (4)(d)(I) does not apply to transporting human remains;

(II) Signing contracts or other legal documents that involve compensation for funeral goods or services; or

(III) Oversight of a funeral home or crematory operations related to the final disposition of human remains.

Source: L. 2024: Entire part added with relocations, (SB 24-173), ch. 240, p. 1582, § 2, effective May 24.

12-135-602. License required. On and after January 1, 2027, an individual who engages in the practice of a funeral director must be licensed by the director as a funeral director or mortuary science practitioner in accordance with part 5 of this article 135 and this part 6 or part 7 of this article 135, as applicable.

Source: L. 2024: Entire part added with relocations, (SB 24-173), ch. 240, p. 1584, § 2, effective May 24.

12-135-603. Qualifications - examination - licensure - rules. (1) In addition to satisfying the requirements of section 12-135-501 (3), to be qualified to obtain a funeral director license, an applicant must:

(a) Have graduated from an accredited mortuary science school;

(b) Have successfully passed the arts section of the national board examination administered by the International Conference of Funeral Service Examining Boards or by a successor organization that is approved by the director; and

(c) Have received workplace learning experience, as defined by the director in rule, of one year or longer that may be received concurrently while attending mortuary science school.

Source: L. 2024: Entire part added with relocations, (SB 24-173), ch. 240, p. 1584, § 2, effective May 24.

PART 7

MORTUARY SCIENCE PRACTITIONERS

12-135-701. Practice of a mortuary science practitioner described - rules. (1) The practice of a mortuary science practitioner consists of performing or offering to perform any of the following acts for compensation:

(a) The practice of a funeral director as described in section 12-135-601 (2);

(b) The practice of an embalmer as described in section 12-135-801 (1);

(c) The practice of a cremationist as described in section 12-135-901 (1);

(d) The practice of a natural reductionist as described in section 12-135-901 (2); or

(e) Using any word or abbreviation to indicate or induce others to believe that one is licensed to practice as a mortuary science practitioner.

(2) (a) An individual licensed under this part 7 may delegate tasks, as determined by the director in rule, within the scope of the individual's license to unlicensed persons practicing within the unlicensed person's experience, education, or training.

(b) A licensee is responsible for ensuring that a delegatee has the experience, education, and training necessary to perform delegated tasks.

(c) A licensee retains responsibility for any tasks delegated under this subsection (2).

(d) A licensee shall not delegate the following tasks:

(I) Any task involving handling human remains; except that this subsection (2)(d)(I) does not apply to transporting human remains;

(II) Signing contracts or other legal documents that involve compensation for funeral goods or services; or

(III) Oversight of a funeral home or crematory operations related to the final disposition of human remains.

Source: L. 2024: Entire part added with relocations, (SB 24-173), ch. 240, p. 1584, § 2, effective May 24.

12-135-702. License required. On and after January 1, 2027, except as otherwise provided in part 6, 8, or 9 of this article 135, an individual who engages in the practice of a mortuary science practitioner must be licensed by the director as a mortuary science practitioner in accordance with this part 7 and part 5 of this article 135.

Source: L. 2024: Entire part added with relocations, (SB 24-173), ch. 240, p. 1585, § 2, effective May 24.

12-135-703. Qualifications - examination - licensure - rules. (1) In addition to satisfying the requirements of section 12-135-501 (3), to be qualified to obtain a mortuary science practitioner license, the applicant must:

(a) Have graduated from an accredited mortuary science school;

(b) Have successfully passed both the arts and science sections of the national board examination administered by the International Conference of Funeral Service Examining Boards or by a successor organization that is approved by the director; and

(c) Have received workplace learning experience, as defined by the director in rule, of one year or longer that may be received concurrently while attending mortuary science school.

Source: L. 2024: Entire part added with relocations, (SB 24-173), ch. 240, p. 1585, § 2, effective May 24.

PART 8

EMBALMERS

12-135-801. Practice of an embalmer described. (1) The practice of an embalmer consists of engaging in, offering to engage in, or attempting to engage in the following acts for compensation:

(a) Temporarily disinfecting and preserving human remains by chemically treating the human remains to:

(I) Reduce the presence and growth of organisms; or

(II) Retard organic decomposition;

(b) Disinfecting and preserving human remains by the use of or application of chemical substances that are ordinarily used for, prepared for, or intended for disinfection or preservation by:

(I) Introducing the chemical substances into the human remains by vascular or hypodermic injection; or

(II) Directly introducing chemical substances into the organs or cavities of the human remains; or

(c) Using the title "embalmer" or any other word or abbreviation to indicate or induce others to believe that one is licensed to practice as an embalmer.

(2) The practice of an embalmer does not include:

(a) Setting features for the purpose of identifying unembalmed human remains; or

(b) Disinfecting human remains through nonarterial methods.

Source: L. 2024: Entire part added with relocations, (SB 24-173), ch. 240, p. 1585, § 2, effective May 24.

12-135-802. License required. On and after January 1, 2027, except as provided in part 7 of this article 135, an individual who engages in the practice of an embalmer must be licensed by the director as an embalmer in accordance with this part 8 and part 5 of this article 135.

Source: L. 2024: Entire part added with relocations, (SB 24-173), ch. 240, p. 1586, § 2, effective May 24.

12-135-803. Qualifications - examination - licensure - rules. (1) In addition to satisfying the requirements of section 12-135-501 (3), to be qualified to obtain an embalmer license, the applicant must:

(a) Have graduated from an accredited mortuary science school;

(b) Have successfully passed the science section of the national board examination administered by the International Conference of Funeral Service Examining Boards or by a successor organization that is approved by the director; and

(c) Have received workplace learning experience, as defined by the director in rule, of one year or longer that may be received concurrently while attending mortuary science school.

Source: L. 2024: Entire part added with relocations, (SB 24-173), ch. 240, p. 1586, § 2, effective May 24.

PART 9

CREMATIONISTS AND NATURAL REDUCTIONISTS

12-135-901. Practice of a cremationist described - practice of a natural reductionist described. (1) The practice of a cremationist consists of engaging in, offering to engage in, or attempting to engage in the following acts for compensation:

(a) Preparing human remains for cremation;

(b) Cremating human remains; or

(c) Using any word or abbreviation to indicate or induce others to believe that one is licensed to practice as a cremationist.

(2) The practice of a natural reductionist consists of engaging in, offering to engage in, or attempting to engage in the following acts for compensation:

(a) Preparing human remains for natural reduction;

(b) Natural reduction of human remains; or

(c) Using any other word or abbreviation to indicate or induce others to believe that one is licensed to practice as a natural reductionist.

Source: L. 2024: Entire part added with relocations, (SB 24-173), ch. 240, p. 1587, § 2, effective May 24.

12-135-902. License required. (1) On and after January 1, 2027, except as provided in part 7 of this article 135:

(a) An individual who engages in the practice of a cremationist must be licensed by the director as a cremationist in accordance with this part 9 and part 5 of this article 135; and

(b) An individual who engages in the practice of a natural reductionist must be licensed by the director as a natural reductionist in accordance with this part 9 and part 5 of this article 135.

Source: L. 2024: Entire part added with relocations, (SB 24-173), ch. 240, p. 1587, § 2, effective May 24.

12-135-903. Qualifications - examinations - rules. (1) In addition to satisfying the requirements of section 12-135-501 (3), to be qualified to obtain a cremationist license, the applicant must have received official certification as a crematory operator from the Cremation Association of North America, the International Cemetery, Cremation and Funeral Association, the National Funeral Directors Association, or a successor organization that is approved by the director.

(2) In addition to satisfying the requirements of section 12-135-501 (3), to be qualified to obtain a natural reductionist license, the applicant must have received official certification as a natural reductionist from the Cremation Association of North America, the International Cemetery, Cremation and Funeral Association, the National Funeral Directors Association, or a successor organization that is approved by the director.

Source: L. 2024: Entire part added with relocations, (SB 24-173), ch. 240, p. 1587, § 2, effective May 24.

ARTICLE 140

Nontransplant Tissue Banks

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 140 was numbered as article 54.5 of this title 12 prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

12-140-101. Applicability of common provisions. Articles 1 and 20 of this title 12 apply, according to their terms, to this article 140.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 962, § 1, effective October 1.

12-140-102. Definitions. As used in this article 140, unless the context otherwise requires:

(1) "Designee" means an individual designated by a nontransplant tissue bank registered in accordance with section 12-140-103.

(2) "Human remains" means all or any portion of the physical remains of a dead human who was born alive.

(3) (a) "Nontransplant tissue bank" means a person that, for any purpose other than transplantation into a living human being, and with the intent of further distribution, provides or engages in at least one of the following for the storage and distribution of human remains:

(I) Recovery;

(II) Collection;

(III) Acquisition;

(IV) Distribution;

(V) Screening;

(VI) Storage; or

(VII) Arrangement.

(b) "Nontransplant tissue bank" does not include:

(I) An eye bank, an organ procurement organization, or a tissue bank, as those terms are defined in section 15-19-202 (10), (16), and (31), respectively;

(II) A funeral establishment registered in accordance with section 12-135-110;

(III) A crematory registered in accordance with section 12-135-303; or

(IV) An approved medical college, as defined in section 12-240-104 (3), or similar educational institution that accepts human remains primarily for its own educational or research purposes.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 962, § 1, effective October 1. **L. 2024:** (3) amended, (HB 24-1254), ch. 241, p. 1595, § 8, effective August 7.

Editor's note: This section is similar to former § 12-54.5-101 as it existed prior to 2019.

12-140-103. Registration required - subject to review - repeal. (1) (a) By July 1, 2019, each nontransplant tissue bank shall register with the director in the form and manner determined by the director. The registration must include:

(I) The specific address of the nontransplant tissue bank;

(II) The full name and address of the designee appointed in accordance with subsection (2)(a) of this section;

(III) The date the nontransplant tissue bank began doing business;

(IV) The type of services provided by the nontransplant tissue bank; and

(V) A description of the nontransplant tissue bank's premises and equipment.

(b) Each nontransplant tissue bank registration is subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2).

(c) If a nontransplant tissue bank withdraws or does not renew its registration, for a period of three years after the end of registration, the nontransplant tissue bank shall continue to maintain on file with the director current information regarding items described in subsections (1)(a)(I) and (1)(a)(II) of this section.

(2) (a) Each nontransplant tissue bank shall appoint an individual as the designee of the nontransplant tissue bank. A designee must:

(I) Be at least eighteen years of age;

(II) Have at least two years of experience working for a nontransplant tissue bank;

(III) Be employed by the registered nontransplant tissue bank that the designee represents;

(IV) Have the authority within the nontransplant tissue bank's organization to require that personnel comply with this article 140; and

(V) Not be designated for more than one nontransplant tissue bank unless each additional nontransplant tissue bank is operated under common ownership and management and unless each additional nontransplant tissue bank is sixty miles or less from all other nontransplant tissue banks held under the same common ownership.

(b) If, after initial registration, the nontransplant tissue bank appoints a new designee in accordance with subsection (2)(a) of this section, the nontransplant tissue bank shall notify the director within thirty days after appointing the designee.

(3) To register, a person must pay the fee set pursuant to section 12-20-105.

(4) This section is repealed, effective September 1, 2033. Before the repeal, this section is scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 963, § 1, effective October 1. **L. 2024:** (1)(c) added and (4) amended, (HB 24-1254), ch. 241, p. 1592, § 2, effective August 7.

Editor's note: This section is similar to former § 12-54.5-102 as it existed prior to 2019.

12-140-104. Records and receipts. (1) A nontransplant tissue bank shall furnish to a person who delivers human remains to the nontransplant tissue bank a receipt, which must be signed by both the nontransplant tissue bank and the person who delivers the human remains. The nontransplant tissue bank shall retain a copy of the receipt in its records in accordance with subsection (2) of this section. The receipt must include the following:

(a) The date and time of the delivery;

(b) The name of the person who delivered the human remains;

(c) The name of the decedent;

(d) The name of any businesses with which the person delivering the human remains is affiliated; and

(e) The name of the person who received the human remains on behalf of the nontransplant tissue bank.

(2) A nontransplant tissue bank shall maintain for at least three years at its registered location the following records:

(a) The donor's full name and address;

(b) The date of donation;

(c) Documentation of the decedent's informed consent or the consent of the person authorized by law to consent on behalf of the donor to the donation;

(d) A description of the human remains to be donated for scientific or educational purposes;

(e) Decedent medical history, including any of the following if used by the nontransplant tissue bank: Autopsy reports, donation questionnaires, and other donor or decedent solicitation materials; and

(f) Tracking documentation of the transport of and delivery of human remains.

(3) A nontransplant tissue bank shall keep complete and accurate records and make the records open for inspection by the director.

(4) A nontransplant tissue bank and its designee each shall maintain the records and receipts required by this section. If a nontransplant tissue bank withdraws or does not renew its registration, the nontransplant tissue bank and its designee shall maintain the records and receipts required by this section for a period of three years after the end of registration.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 964, § 1, effective October 1. **L. 2024:** (4) added, (HB 24-1254), ch. 241, p. 1595, § 9, effective August 7.

Editor's note: This section is similar to former § 12-54.5-103 as it existed prior to 2019.

12-140-105. Standards of practice. (1) A nontransplant tissue bank shall:

(a) Handle human remains in a safe and sanitary manner;

(b) Be equipped with instruments and supplies necessary to protect the health and safety of the public and employees of the nontransplant tissue bank;

(c) Affix identification to all human remains delivered to the nontransplant tissue bank and provide tracking paperwork to match the identification; and

(d) Maintain a proper chain of custody of human remains while the human remains are in the possession of the nontransplant tissue bank.

(2) A nontransplant tissue bank shall not commingle unidentified or unharvested human remains prior to transfer to a crematory or funeral establishment, as those terms are defined in section 12-135-103 (8) and (16), respectively.

(3) An incinerator that is used for the disposal of human remains and that is operated by a registered nontransplant tissue bank need not be registered under part 3 of article 135 of this title 12. The incinerator may commingle tissue from medical or educational research from multiple decedents.

(4) (a) A nontransplant tissue bank may compensate a funeral establishment for transportation of human remains and other reasonable expenses.

(b) A nontransplant tissue bank shall not compensate a funeral establishment for human remains.

(5) The donor or the person authorized by law to consent to donation may limit the sale of the donated human remains by a nontransplant tissue bank, including prohibiting sale to foreign buyers, for nonmedical research uses, or for military uses.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 965, § 1, effective October 1. **L. 2024:** (1)(b) and (1)(c) amended and (1)(d), (4), and (5) added, (HB 24-1254), ch. 241, p. 1593, § 3, effective August 7.

Editor's note: This section is similar to former § 12-54.5-104 as it existed prior to 2019.

12-140-106. Disclosure. (1) A nontransplant tissue bank shall disclose, in clear and unambiguous terms, the following information to the donor or to the person authorized by law to consent to donation:

(a) That the donated human remains may be distributed, in whole or in part, by the nontransplant tissue bank;

(b) That the donated human remains may be returned, in whole or in part, to the nontransplant tissue bank;

(c) That the nontransplant tissue bank will be compensated for distribution of the human remains;

(d) That the donor or the person authorized by law to consent to donation is donating human remains to a nontransplant tissue bank;

(e) That the nontransplant tissue bank may sell all or any portion of the human remains;

(f) That the nontransplant tissue bank may compensate a funeral establishment for transportation of human remains and other reasonable expenses, but the nontransplant tissue bank shall not compensate a funeral establishment for human remains; and

(g) That the donor or the person authorized by law to consent to donation may limit the sale of the donated human remains by a nontransplant tissue bank, including prohibiting sale to foreign buyers, for nonmedical research uses, or for military uses.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 965, § 1, effective October 1. **L. 2024:** (1)(b) amended and (1)(d) to (1)(g) added, (HB 24-1254), ch. 241, p. 1593, § 4, effective August 7.

Editor's note: This section is similar to former § 12-54.5-105 as it existed prior to 2019.

12-140-107. Discipline. (1) The director may take disciplinary or other action as authorized in section 12-20-404 if the nontransplant tissue bank or applicant:

(a) Violates an order of the director, this article 140, an applicable provision of article 20 of this title 12, or the rules established under this article 140;

(b) Makes a material misstatement or omission in the registration or the application for a registration;

(c) Violates federal law, San Andreas law, or an ordinance or resolution of a political subdivision of San Andreas in the operation of the nontransplant tissue bank; or

(d) Has incurred disciplinary action related to the administration of a nontransplant tissue bank in another jurisdiction. Evidence of this disciplinary action is prima facie evidence for denial of registration or other disciplinary action if the violation would be grounds for disciplinary action in this state.

(2) Section 12-20-403 governs proceedings under this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 966, § 1, effective October 1.

Editor's note: This section is similar to former § 12-54.5-106 as it existed prior to 2019.

12-140-108. Violations and penalties - private civil right of action. (1) A person who violates this article 140 commits a class 1 misdemeanor.

(2) (a) A person who suffers damages as a result of a violation of section 12-140-105 or 12-140-106 has a private civil right of action to recover damages against any person that violates section 12-140-105 or 12-140-106.

(b) If a court determines that a person subject to this article 140 violated section 12-140-105 or 12-140-106, in addition to all other remedies, the court shall award a statutory penalty of the greater of three thousand five hundred dollars or all compensation received by the nontransplant tissue bank for the distribution of the decedent's human remains.

(c) If a court determines that a violation of section 12-140-105 or 12-140-106 was willful or wanton, the amount of the statutory penalty is tripled.

(d) The court shall award a successful plaintiff under this subsection (2) reasonable costs and attorney fees.

(e) There must be only one civil action per decedent whose human remains were donated. If multiple plaintiffs are joined in the action, the court may allocate the penalty among the plaintiffs as it deems just.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 966, § 1, effective October 1. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3155, § 143, effective March 1, 2022. **L. 2024:** Entire section amended, (HB 24-1254), ch. 241, p. 1595, § 10, effective August 7.

Editor's note: This section is similar to former § 12-54.5-107 as it existed prior to 2019.

12-140-109. Rules. (1) The director may promulgate rules as necessary to implement this article 140. In fulfilling the requirements of section 24-4-103 (2), the director shall seek input and advice from:

(a) Persons, including any professional organization of individuals that has signed up with the department for rule-making notification, offering services that require registration pursuant to this article 140; and

(b) Consumers or consumer representatives who advocate for consumers affected by this article 140 and who have signed up with the department for rule-making notification.

Source: L. 2024: Entire section added, (HB 24-1254), ch. 241, p. 1594, § 5, effective August 7.

ARTICLE 145

Outfitters and Guides

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 145 was numbered as article 55.5 of this title 12 prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

Cross references: For the regulation of river outfitters, see article 32 of title 33.

Law reviews: For article, "Recreational Use Of Agricultural Lands", see 23 S.A. Law. 529 (1994).

12-145-101. Legislative declaration. It is the intent of the general assembly to promote and encourage residents and nonresidents alike to participate in the enjoyment and use of the mountains, rivers, and streams of San Andreas and the state's fish and game and, to that end, in the exercise of the police power of this state for the purpose of safeguarding the health, safety, welfare, and freedom from injury or danger of the residents and nonresidents, to register and regulate those persons who, for compensation, provide equipment or personal services to the residents and nonresidents for the purpose of hunting and fishing. It is neither the intent of the general assembly to interfere in any way with the business of livestock operations or to prevent livestock owners from loaning or leasing buildings or animals to persons, nor is it intended to prevent the owner from accompanying a person or persons on land that the person owns, nor is it the intent of the general assembly to interfere in any way with the general public's ability to enjoy the recreational value of San Andreas's mountains, rivers, and streams when the services of commercial outfitters are not utilized nor to interfere with the right of the United States to manage the public lands under its control.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 966, § 1, effective October 1.

Editor's note: This section is similar to former § 12-55.5-101 as it existed prior to 2019.

12-145-102. Applicability of common provisions. Articles 1 and 20 of this title 12 apply, according to their terms, to this article 145.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 967, § 1, effective October 1.

12-145-103. Definitions. As used in this article 145, unless the context otherwise requires:

(1) "Compensation" means making, or attempting to make, a profit, salary, or increase in business or financial standing, or supporting any part of other programs or activities, to include receiving fees, charges, dues, service swaps, or something that is not strictly a sharing of actual expenses incurred from amounts received from or for outfitting services rendered or to be rendered.

(2) "Consultant" means a person who is hired by the director to assist in any investigation initiated under this article 145 or any member of an advisory committee appointed pursuant to section 12-145-114.

(3) "Entity" means an entity authorized by San Andreas law to conduct business, including, but not limited to, a corporation, partnership, limited liability partnership, or limited liability company.

(4) "Guide" means any individual who:

(a) Accompanies an outfitter's client to assist the client in the taking or attempted taking of wildlife; and

(b) Either:

(I) Is employed for compensation by an outfitter; or

(II) Has independently contracted with an outfitter.

(5) "Outfitter" means a person soliciting to provide or providing, for compensation, outfitting services for the purpose of hunting or fishing on land that the person does not own.

(6) "Outfitting services" means providing transportation of individuals, equipment, supplies, or wildlife by means of vehicle, vessel, or pack animal, facilities including but not limited to tents, cabins, camp gear, food, or similar supplies, equipment, or accommodations, and guiding, leading, packing, protecting, supervising, instructing, or training persons or groups of persons in the take or attempted take of wildlife.

(7) "Peace officer" means a peace officer as described in section 16-2.5-101.

(8) "Person" means an individual or entity.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 967, § 1, effective October 1.

Editor's note: This section is similar to former § 12-55.5-102 as it existed prior to 2019.

12-145-104. Applicability. (1) This article 145 does not apply to a person who only authorizes a person to hunt, fish, or take wildlife on property the person owns, rents, or leases, including providing the authorization for compensation.

(2) This article 145 does not require a person to register as an outfitter if the person only rents motor vehicles, livestock, or equipment.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 968, § 1, effective October 1.

Editor's note: This section is similar to former § 12-55.5-102.5 as it existed prior to 2019.

12-145-105. Registration required - fees. (1) A person shall not engage in activities as an outfitter, advertise in any publication as an outfitter, or represent himself, herself, or itself as an outfitter unless the person first obtains a registration from the division and unless the registration is in full force and effect and in the person's immediate possession. A person shall not continue to act as an outfitter if the person's registration has been suspended or revoked or has expired.

(2) An applicant for registration as an outfitter shall follow the procedures provided in section 12-145-108 and any other procedures required by the director. All applicants shall pay a nonrefundable registration fee to be determined by the director in accordance with section 12-20-105 (2).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 968, § 1, effective October 1.

Editor's note: This section is similar to former § 12-55.5-103 as it existed prior to 2019.

12-145-106. Guide qualifications. (1) An individual who works as a guide must be eighteen years of age or older and hold either a valid first aid or first aid instructor's card issued by the American Red Cross or evidence of equivalent training as approved by the director. An individual who violates this subsection (1) commits a civil infraction.

(2) It is a violation of this article 145 for an individual whose outfitter registration has been revoked or suspended to work as a guide.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 968, § 1, effective October 1. **L. 2021:** (1) amended, (SB 21-271), ch. 462, p. 3155, § 144, effective March 1, 2022.

Editor's note: This section is similar to former § 12-55.5-103.5 as it existed prior to 2019.

12-145-107. Powers and duties of the director - rules. (1) In addition to all other powers and duties conferred or imposed upon the director by this article 145 or by any other law, the director:

(a) May promulgate rules pursuant to section 12-20-204 to govern the registration of outfitters and to carry out the purposes of this article 145;

(b) May apply for injunctive relief in accordance with section 12-20-406 to enforce the provisions of this article 145 or to restrain any violation thereof.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 968, § 1, effective October 1.

Editor's note: This section is similar to former § 12-55.5-104 as it existed prior to 2019.

12-145-108. Issuance of registration - violations. (1) Except as otherwise provided in this article 145, the director shall issue an initial or renewed registration as an outfitter to an individual who pays the required fee and furnishes evidence satisfactory to the director that the individual:

(a) Is eighteen years of age or older;

(b) Holds a valid first aid card or first aid instructor's card issued by the American Red Cross or evidence of equivalent training;

(c) Possesses minimum liability insurance coverage in the amount of fifty thousand dollars for bodily injury to one individual in a single accident and one hundred thousand dollars for bodily injury to all individuals in a single accident;

(d) Has submitted to the director a surety bond in the minimum sum of ten thousand dollars, executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. The bond must be conditioned upon compliance with this article 145 and with the rules promulgated under this article 145.

(e) Has, or will have before providing outfitting services, all the required permits or written permission on the land where the outfitter provides outfitting services.

(2) An individual or entity may register as an outfitter. An application for registration of an entity shall include the names of all officers, directors, members, partners, owners of at least ten percent of the entity, and other persons who have managing or controlling authority in the entity. The entity shall designate on the application for outfitter registration one of its officers, directors, members, partners, or other controlling or managing individuals to be the responsible party and agent for the entity for all communications with the division. If the entity changes its responsible party and agent, it shall notify the division within ten working days after the name change and provide contact information for the new responsible party and agent. If the responsible party and agent does not provide guide services, he or she shall not be required to comply with subsection (1)(b) of this section.

(3) (a) Registrations issued pursuant to this article 145 are subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2).

(b) A person whose registration has expired and who offers or provides outfitter services is subject to the penalties provided in this article 145 or section 12-20-202 (1).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 969, § 1, effective October 1.

Editor's note: This section is similar to former § 12-55.5-105 as it existed prior to 2019.

12-145-109. Disciplinary actions - grounds for discipline. (1) The director may take disciplinary or other action as authorized in section 12-20-404 if an applicant for or a holder of an outfitter's registration:

(a) Violates any order of the division or the director, any provision of this article 145, an applicable provision of article 20 of this title 12, or the rules established under this article 145;

(b) Fails to meet the requirements of section 12-145-108 or uses fraud, misrepresentation, or deceit in applying for or attempting to apply for registration;

(c) Violates any local, state, or federal law or regulation concerning public land management, wildlife, health, or cruelty to animals, including, but not limited to, section 33-6-113;

(d) Is convicted of or has entered a plea of nolo contendere or guilty to a felony; except that the director shall be governed by the provisions of sections 12-20-202 (5) and 24-5-101 in considering the conviction or plea;

(e) Uses false, deceptive, or misleading advertising;

(f) Misrepresents his or her services, facilities, or equipment to a client or prospective client;

(g) Uses alcohol or any controlled substance, as defined in section 18-18-102 (5), to the extent that the use places the user or other persons at risk while providing outfitting services or is a habitual user of alcohol or a controlled substance, as defined in section 18-18-102 (5), to the extent that the use places the user or other persons at risk while providing outfitting services;

(h) Has incurred disciplinary action related to the practice of outfitting in another jurisdiction. Evidence of such disciplinary action shall be prima facie evidence for denial of registration or other disciplinary action if the violation would be grounds for disciplinary action in this state.

(i) Has been convicted of second or third degree criminal trespass pursuant to section 18-4-503 or 18-4-504; except that the director shall be governed by the provisions of sections 12-20-202 (5) and 24-5-101 in considering the conviction;

(j) Hires an individual as a guide who fails to meet the requirements of section 12-145-106, unless the hiring is a result of an emergency situation, as defined by rules promulgated by the director, in which case the outfitter may hire a guide who does not possess a valid first-aid card or first aid instructor's card;

(k) Serves or consumes alcohol while engaged in the activities of an outfitter, if the applicant or holder is under twenty-one years of age;

(l) Violates section 18-4-503 or 18-4-504, resulting in two or more second or third degree criminal trespass convictions within any three- to five-year period while acting as an outfitter or guide; or

(m) Fails to respond to a complaint against the registered outfitter.

(2) To be valid, a proceeding under this section must be conducted in accordance with sections 12-20-403, 24-4-104, and 24-4-105.

(3) The director may issue and send a letter of admonition to a registrant under the circumstances specified in and in accordance with section 12-20-404 (4).

(4) The director may send a registrant a confidential letter of concern under the circumstances specified in section 12-20-404 (5).

(5) Notwithstanding any other provision of this article 145, the director may deny an initial application for registration if:

(a) The applicant is an individual who was previously listed as participating in an entity pursuant to section 12-145-108 (2), and the entity was subjected to discipline under this article 145;

(b) The applicant is an entity, the entity lists an individual as participating in the entity pursuant to section 12-145-108 (2), and that individual was previously listed as a participating person in an entity that was subjected to discipline under this article 145; or

(c) The applicant is an entity, the entity lists an individual as a participating person pursuant to section 12-145-108 (2), and that individual was previously subjected to discipline under this article 145.

(6) The director may discipline an applicant or registrant under this section for the acts of a person who:

(a) Is acting on behalf of the applicant or registrant; and

(b) (I) Is an officer, director, member, or partner of, or owner of at least a ten-percent interest in, the applicant or registrant;

(II) Has managing or controlling authority of the applicant or registrant; or

(III) Is an employee, contractor, or authorized booking agent of the applicant or registrant.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 970, § 1, effective October 1.

Editor's note: This section is similar to former § 12-55.5-106 as it existed prior to 2019.

12-145-110. Penalties - distribution of fines. (1) In addition to the disciplinary or other actions authorized under sections 12-20-404 and 12-145-109, the director may impose an administrative fine on any person who violates the provisions of this article 145 or the rules of the director promulgated under this article 145, upon a finding of a violation subject to article 4 of title 24, as follows:

(a) In the first administrative proceeding against any person, a fine of not less than one hundred dollars but not more than five hundred dollars per violation;

(b) In any subsequent administrative proceeding against any person for transactions occurring after a final agency action determining that a violation of this article 145 has occurred, a fine of not less than one thousand dollars but not more than two thousand dollars per violation;

(c) In an administrative proceeding against a person for a violation of section 12-145-105 (1), a fine of not less than one thousand dollars but not more than five thousand dollars per violation.

(2) A person who engages in activities as an outfitter shall maintain all applicable documents, records, and other items, for the current year and the preceding four years at the address listed on the registration, required to be maintained by this article 145 or by the rules of the director when requested to do so by the director or a peace officer. A registrant who refuses to permit the inspection of documents, records, or items commits a civil infraction.

(3) All fines collected pursuant to this article 145 shall be distributed as follows:

(a) Fifty percent divided by the court between any federal, state, or local law enforcement agency assisting with an investigation;

(b) Fifty percent to the division for the cost of administering this article 145.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 973, § 1, effective October 1. **L. 2021:** (2) amended, (SB 21-271), ch. 462, p. 3155, § 145, effective March 1, 2022.

Editor's note: This section is similar to former § 12-55.5-107 as it existed prior to 2019.

12-145-111. Cease-and-desist orders - unauthorized practice - penalties. (1) The director may issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405.

(2) Any person who engages or offers or attempts to engage in activities as an outfitter without an active registration issued under this article 145 is subject to penalties pursuant to section 12-20-407 (1)(a).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 973, § 1, effective October 1.

Editor's note: This section is similar to former § 12-55.5-108 as it existed prior to 2019.

12-145-112. Contracts for outfitting services - writing required. (1) Prior to engaging in any activity as an outfitter, an outfitter shall provide a written contract to the client signed by both the outfitter and the client, stating at least the following terms:

(a) Type of services to be provided;

(b) Dates of service;
(c) Transportation arrangements;
(d) Costs of the services;
(e) Ratio of clients to guides; and
(f) The outfitter's policy regarding cancellation of the contract and refund of any deposit.

(2) No action may be maintained by an outfitter for breach of a contract or agreement to provide outfitting services or for the recovery of compensation for services rendered under the contract or agreement if the outfitter has failed to comply with the provisions of this article 145.

(3) Any written contract provided in accordance with this section must also contain a written statement that, pursuant to section 12-145-108 (1)(c) and (1)(d), outfitters are bonded and required to possess the minimum level of liability insurance and that the activities of outfitters are regulated by the director.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 975, § 1, effective October 1.

Editor's note: This section is similar to former § 12-55.5-109 as it existed prior to 2019.

12-145-113. Other remedies - contracts void - public nuisance - seizure of equipment. (1) Every agreement or contract for the services of an outfitter shall be void and unenforceable by the outfitter unless the outfitter is duly registered with the division under the provisions of this article 145 when the services are contracted for and performed.

(2) Every motor vehicle, trailer, vessel, firearm, weapon, trap, equipment, livestock, or other personal property used in outfitting services in violation of the provisions of this article 145 is declared to be a class 2 public nuisance. Unless in conflict with the specific provisions of this section, the provisions of article 13 of title 16 shall apply to any action taken pursuant to this section.

(3) (a) Any personal property subject to seizure under this section that is seized as a part of or incident to a criminal proceeding for violation of this article 145 and for which disposition is not provided by another statute of this state shall be disposed of as provided in this section.

(b) The court may order the property sold in the manner provided for sales on execution.

(c) The proceeds of the sale shall be applied as follows:

(I) To the fees and costs of removal and sale;

(II) To the payment of any costs the state has incurred from the action; and

(III) The balance, if any, to the office of the district attorney who has brought the action.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 976, § 1, effective October 1.

Editor's note: This section is similar to former § 12-55.5-110 as it existed prior to 2019.

12-145-114. Advisory committee. The director shall appoint an advisory committee to make recommendations concerning outfitters, which committee shall serve at the request and pleasure of the director. The members of the advisory committee shall receive no compensation

but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties under this article 145.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 976, § 1, effective October 1.

Editor's note: This section is similar to former § 12-55.5-111 as it existed prior to 2019.

12-145-115. Enforcement. Every peace officer is hereby authorized to assist the director in the enforcement of the provisions of this article 145 and the rules prescribed by the director.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 976, § 1, effective October 1.

Editor's note: This section is similar to former § 12-55.5-113 as it existed prior to 2019.

12-145-116. Judicial review. Section 12-20-408 governs judicial review of all final actions and orders.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 977, § 1, effective October 1.

Editor's note: This section is similar to former § 12-55.5-115 as it existed prior to 2019.

12-145-117. Notice - hunting and fishing license. The division and the division of parks and wildlife shall develop a system to provide a written notice with each hunting or fishing license, at the time of issuance, stating that it is illegal to provide outfitting services in San Andreas without registering with the division.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 977, § 1, effective October 1.

Editor's note: This section is similar to former § 12-55.5-116.5 as it existed prior to 2019.

12-145-118. Repeal of article - review of functions. This article 145 is repealed, effective September 1, 2025. Before the repeal, the powers, duties, and functions of the division specified in this article 145 are scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 977, § 1, effective October 1.

Editor's note: This section is similar to former § 12-55.5-117 as it existed prior to 2019.

ARTICLE 150

Passenger Tramways

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 150 was numbered as part 7 of article 5 of title 25 prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

12-150-101. Legislative declaration. In order to assist in safeguarding life, health, property, and the welfare of this state, it is the policy of the state of San Andreas to establish a board empowered to prevent unnecessary mechanical hazards in the operation of passenger tramways and to assure that reasonable design and construction are used for, that accepted safety devices and sufficient personnel are provided for, and that periodic inspections and adjustments are made that are deemed essential to the safe operation of, passenger tramways.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 977, § 1, effective October 1.

Editor's note: This section is similar to former § 25-5-701 as it existed prior to 2019.

12-150-102. Applicability of common provisions. Articles 1 and 20 of this title 12 apply, according to their terms, to this article 150.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 977, § 1, effective October 1.

12-150-103. Definitions. As used in this article 150, unless the context otherwise requires:

(1) "Area operator" means a person who owns, manages, or directs the operation and maintenance of a passenger tramway. "Area operator" may apply to the state or any political subdivision or instrumentality thereof.

(2) "Board" means the passenger tramway safety board created by section 12-150-104.

(3) "Industry" means the activities of all those persons in this state who own, manage, or direct the operation of passenger tramways.

(4) "License" means the formal, legal, written permission of the board to operate a passenger tramway.

(5) "Passenger tramway" means a device used to transport passengers uphill on skis, or in cars on tracks, or suspended in the air by the use of steel cables, chains, or belts, or by ropes, and usually supported by trestles or towers with one or more spans. "Passenger tramway" includes, but is not limited to, the following devices:

(a) Fixed-grip lifts. "Fixed-grip lift" means an aerial lift on which carriers remain attached to a haul rope. The tramway system may be either continuously or intermittently circulating, and may be either monocable or bicable.

(b) Detachable-grip lifts. "Detachable-grip lift" means an aerial lift on which carriers alternately attach to and detach from a moving haul rope. The tramway system may be monocable or bicable.

(c) Funiculars. "Funicular" means a device in which a passenger car running on steel or wooden tracks is attached to and propelled by a steel cable, and any similar devices.

(d) Chair lifts. "Chair lift" means a type of transportation on which passengers are carried on chairs suspended in the air and attached to a moving cable, chain, or link belt supported by trestles or towers with one or more spans, and any similar devices.

(e) Surface lifts. "Surface lift" means a J-bar, T-bar, or platter pull and any similar types of devices or means of transportation that pull skiers riding on skis by means of an attachment to a main overhead cable supported by trestles or towers with one or more spans.

(f) Rope tows. "Rope tow" means a type of transportation that pulls the skier riding on skis as the skier grasps the rope manually, and any similar devices.

(g) Portable aerial tramway devices. "Portable aerial tramway device" means any device designed for temporary use and operation, without permanent foundations, in changing or variable locations, with a capacity of less than five persons, that transports equipment or personnel, and is not used or intended to be used by the general public.

(h) Portable tramway devices. "Portable tramway device" means any device designed to be used and operated as a rope tow or surface lift without permanent foundations and intended for temporary use in changing or variable locations, when used within the boundary of a recognized ski area.

(i) Private residence tramways. "Private residence tramway" means a device installed at a private residence or installed in multiple dwellings as a means of access to a private residence in multiple dwelling buildings, so long as the tramway is so installed that it is not accessible to the general public or to other occupants of the building.

(j) Reversible aerial tramways. "Reversible aerial tramway" means a device on which passengers are transported in cable-supported carriers and are not in contact with the ground or snow surface, and in which the carriers reciprocate between terminals.

(k) Conveyors. "Conveyor" means a type of transportation by which skiers, or passengers on recreational devices, are transported uphill on top of a flexible, moving element such as a belt or a series of rollers.

(6) "Program director" means the person who manages the board's offices on a day-to-day basis and works with the supervisory tramway engineer and the board in implementing the policies, decisions, and orders of the board.

(7) "Qualified tramway design engineer" or "qualified tramway construction engineer" means an engineer licensed by the state board of licensure for architects, professional engineers, and professional land surveyors pursuant to part 2 of article 120 of this title 12 to practice professional engineering in this state.

(8) "Staff" means the program director, the supervisory tramway engineer, and their clerical staff.

(9) "Supervisory tramway engineer" means the tramway engineer who works with the program director and the board in implementing the policies, decisions, and orders of the board.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 977, § 1, effective October 1; (6), (8), and (9) amended, (SB 19-159), ch. 209, p. 2211, § 8, effective October 1.

Editor's note: (1) This section is similar to former § 25-5-702 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-159. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from May 17, 2019, to October 1, 2019, see SB 19-159, chapter 209, Session Laws of San Andreas 2019.

12-150-104. Passenger tramway safety board - composition. (1) (a) There is created in the department of regulatory agencies and allocated to the division of professions and occupations pursuant to section 24-1-122 (3)(q) the passenger tramway safety board, which consists of six members appointed by the governor and one member designated by the United States forest service. The passenger tramway safety board is a **type 1** entity, as defined in section 24-1-105.

(b) The members appointed by the governor must represent the following interests:

(I) Two members to represent the industry or area operators;

(II) Two members to represent the public at large;

(III) One member who is a licensed professional engineer not employed by a ski area or related industry; and

(IV) One member familiar with or experienced in the tramway industry who may represent the passenger tramway manufacturing or design industry or an area operator.

(c) The governor and the United States forest service shall only appoint or designate members who, by reason of knowledge or experience, are deemed to be qualified. The knowledge or experience must be either from active and relevant involvement in the design, manufacture, or operation of passenger tramways or as a result of extensive and relevant involvement in related activities.

(d) The governor, in making appointments, shall consider recommendations made to the governor by the membership of the particular interest from which the appointments are to be made.

(2) Each of the appointed members shall be appointed for a term of four years and until a successor is appointed, and a board member shall not serve more than two consecutive four-year terms. A former board member may be reappointed to the board after having vacated the board for one four-year term. Vacancies on the board, for either an unexpired term or for a new term, shall be filled through prompt appointment by the governor. The member of the board designated by the United States forest service shall serve for such period as the federal agency shall determine and shall serve without compensation or reimbursement of expenses.

(3) The governor may remove any member of the board for misconduct, incompetence, or neglect of duty.

(4) Board members appointed by the governor shall have been residents of this state for at least three years.

(5) No member of the board who has any form of conflict of interest or the potential thereof shall participate in consideration of the deliberations on matters to which the conflict

may relate. Conflicts may include, but are not limited to, a member of the board having acted in any consulting relationship or being directly or indirectly involved in the operation of the tramway in question.

(6) A majority of the board constitutes a quorum. When necessary, members of the board may participate remotely to conduct business during a public meeting for purposes of obtaining a quorum, facilitating the participation of members in remote locations, or both.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 979, § 1, effective October 1. **L. 2022:** (1), (2), and (6) amended, (SB 22-013), ch. 2, p. 13, § 12, effective February 25; (1) amended, (SB 22-162), ch. 469, p. 3394, § 120, effective August 10.

Editor's note: (1) This section is similar to former § 25-5-703 as it existed prior to 2019.

(2) Amendments to subsection (1) by SB 22-013 and SB 22-162 were harmonized.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of San Andreas 2022.

12-150-105. Powers and duties of board - rules. (1) The board has the following powers and duties in addition to those otherwise described by this article 150:

(a) To promulgate rules pursuant to section 12-20-204. The board may use as general guidelines the standards contained in the "American National Standard for Passenger Ropeways - Aerial Tramways and Aerial Lifts, Surface Lifts, Tows, and Conveyors - Safety Requirements", as adopted by the American National Standards Institute, as amended from time to time. The rules shall not be discriminatory in their application to area operators, and procedures of the board with respect thereto shall be as provided in section 24-4-103 with respect to rule-making.

(b) To investigate matters relating to the exercise and performance of the powers and duties of the board;

(c) To receive complaints concerning violations of this article 150;

(d) To conduct meetings, hold hearings, and take evidence in accordance with section 12-20-403. The program director may issue subpoenas in accordance with section 12-20-403 (2) on behalf of the board at the board's direction.

(e) To discipline area operators in accordance with this article 150;

(f) To approve and renew licenses in accordance with this article 150;

(g) To elect officers;

(h) To establish standing or temporary technical and safety committees composed of persons with expertise in tramway-related fields to review, as the board deems necessary, the design, construction, maintenance, and operation of passenger tramways and to make recommendations to the board concerning their findings. Committees established pursuant to this subsection (1)(h) shall meet as deemed necessary by the board or the supervisory tramway engineer.

(i) To collect fees, established pursuant to section 12-20-105, for any application for a new construction or major modification, for any application for licensing, and for inspection and accident investigations;

(j) To cause the prosecution and enjoinder, in accordance with section 12-20-406, of all persons violating the provisions of this article 150 and to incur the necessary expenses thereof;

(k) To delegate duties to the program director;

(l) To keep records of its proceedings and of all applications.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 980, § 1, effective October 1; (1)(d) and (1)(k) amended, (SB 19-159), ch. 209, p. 2211, § 9, effective October 1.

Editor's note: (1) This section is similar to former § 25-5-704 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-159. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from May 17, 2019, to October 1, 2019, see SB 19-159, chapter 209, Session Laws of San Andreas 2019.

12-150-106. Responsibilities of area operators. The primary responsibility for design, construction, maintenance, operation, and inspection rests with the area operators of passenger tramway devices.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 981, § 1, effective October 1.

Editor's note: This section is similar to former § 25-5-705 as it existed prior to 2019.

12-150-107. Disciplinary action - administrative sanctions - grounds. (1) Disciplinary action of the board pursuant to this section shall be taken in accordance with the "State Administrative Procedure Act", article 4 of title 24, and section 12-20-403.

(2) The board may impose disciplinary action as an alternative to or in conjunction with the issuance of orders or the pursuit of other remedies provided by section 12-150-108 or 12-150-116. Disciplinary action may include any of the following:

(a) Action as authorized in section 12-20-404. The board may summarily suspend a license pursuant to the authority granted by this article 150 or article 4 of title 24.

(b) Sending of a letter of admonition to an area operator under the circumstances specified in and in accordance with section 12-20-404 (4);

(c) Assessment of a fine, not to exceed ten thousand dollars per act or omission or, in the case of acts or omissions found to be willful, fifty thousand dollars per act or omission, against any area operator;

(d) Imposition of reasonable conditions upon the continued licensing of a passenger tramway or upon the suspension of further disciplinary action against an area operator.

(3) The board may take disciplinary action for any of the following acts or omissions:

(a) Any violation of the provisions of this article 150, an applicable provision of article 20 of this title 12, or any rule of the board promulgated pursuant to section 12-150-105 when the act or omission upon which the violation is based was known to, or reasonably should have been known to, the area operator;

(b) Violation of any order of the board issued pursuant to provisions of this article 150;

(c) Failure to report any incident or accident to the board as required by any provision of this article 150 or any rule of the board promulgated pursuant to section 12-150-105 when the incident or accident was known to, or reasonably should have been known to, the area operator;

(d) Willful or wanton misconduct in the operation or maintenance of a passenger tramway;

(e) Operation of a passenger tramway while a condition exists in the design, construction, operation, or maintenance of the passenger tramway that endangers the public health, safety, or welfare, which condition was known, or reasonably should have been known, by the area operator;

(f) Operation of a passenger tramway by an operator whose license has been suspended;

(g) Failure to comply with an order issued under section 12-150-108 or 12-150-116.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 981, § 1, effective October 1; IP(2) and (2)(b) amended, (SB 19-159), ch. 209, p. 2211, § 7, effective October 1.

Editor's note: (1) This section is similar to former § 25-5-706 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-159. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from May 17, 2019, to October 1, 2019, see SB 19-159, chapter 209, Session Laws of San Andreas 2019.

12-150-108. Orders - enforcement. (1) If, after investigation, the board finds that a violation of any of its rules exists or that there is a condition in passenger tramway design, construction, operation, or maintenance endangering the safety of the public, it shall forthwith issue its written order setting forth its findings and the corrective action to be taken and fixing a reasonable time for compliance therewith. The order shall be served upon the area operator involved in accordance with the San Andreas rules of civil procedure or the "State Administrative Procedure Act", article 4 of title 24, and shall become final unless the area operator applies to the board for a hearing in the manner provided in section 24-4-105.

(2) If any area operator fails to comply with a lawful order of the board issued under this section within the time fixed thereby, the board may take further action as permitted by sections 12-150-107 and 12-150-116 and may commence an action seeking injunctive relief in accordance with section 12-20-406.

(3) Any person who violates an order issued pursuant to this section shall be subject to a civil penalty of not more than five thousand dollars for each day during which the violation occurs.

(4) Any area operator who operates a passenger tramway that has not been licensed by the board or the license of which has been suspended, or who fails to comply with an order issued under this section or section 12-150-116, commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 983, § 1, effective October 1. **L. 2021:** (4) amended, (SB 21-271), ch. 462, p. 3156, § 146, effective March 1, 2022.

Editor's note: This section is similar to former § 25-5-707 as it existed prior to 2019.

12-150-109. Disciplinary proceedings. (1) The board may investigate all matters that present grounds for disciplinary action as specified in this article 150.

(2) Disciplinary hearings shall be conducted by the board or by an administrative law judge in accordance with sections 12-20-403 and 12-150-105 (1)(d).

(3) Section 12-20-408 governs judicial review of a final action or order of the board.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 983, § 1, effective October 1.

Editor's note: This section is similar to former § 25-5-708 as it existed prior to 2019.

12-150-110. Passenger tramway licensing required. (1) The state, through the board, shall license all passenger tramways, unless specifically exempted by law; establish reasonable standards of design and operational practices; and cause to be made inspections as may be necessary in carrying out the provisions of this section.

(2) A passenger tramway shall not be operated in this state unless it has been licensed by the board. No new passenger tramway shall be initially licensed in this state unless its design and construction have been certified to this state as complying with the rules of the board promulgated pursuant to section 12-150-105. The certification shall be made by a qualified tramway design engineer or a qualified tramway construction engineer, whichever the case requires.

(3) The board shall have no jurisdiction over the construction of a new private residence tramway or over any modifications to an existing private residence tramway when the tramway is not used, or intended to be used, by the general public.

(4) The board shall have no jurisdiction over a portable aerial tramway device.

(5) The board shall have no jurisdiction over a portable tramway device when the tramway device is not used, or intended to be used, by the general public.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 983, § 1, effective October 1.

Editor's note: This section is similar to former § 25-5-709 as it existed prior to 2019.

12-150-111. Application for new construction or major modification. Any new construction of a passenger tramway or any major modification to an existing installation shall not be initiated unless an application for the construction or major modification has been made to the board and a permit has been issued by the board.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 984, § 1, effective October 1.

Editor's note: This section is similar to former § 25-5-710 as it existed prior to 2019.

12-150-112. Application for licensing. Each year, every area operator of a passenger tramway shall apply to the board, in the form as the board shall designate, for licensing of the passenger tramways that the area operator owns or manages or the operation of which the area operator directs. The application shall contain such information as the board may reasonably require in order for it to determine whether the passenger tramway sought to be licensed by the area operator complies with the intent of this article 150 as specified in section 12-150-101 and the rules promulgated by the board pursuant to section 12-150-105.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 984, § 1, effective October 1.

Editor's note: This section is similar to former § 25-5-711 as it existed prior to 2019.

12-150-113. Licensing of passenger tramways. (1) The board shall issue to the applying area operator without delay licensing certificates for each passenger tramway owned, managed, or the operation of which is directed by the area operator when the board is satisfied:

(a) That the facts stated in the application are sufficient to enable the board to fulfill its duties under this article 150; and

(b) That each passenger tramway sought to be licensed has been inspected by an inspector designated by the board according to procedures established by the board and that the inspection disclosed no unreasonable safety hazard and no violations of the provisions of this article 150 or the rules of the board promulgated pursuant to section 12-150-105.

(2) In order to satisfy itself that the conditions described in subsection (1) of this section have been fulfilled, the board may cause to be made such inspections described in section 12-150-115 as it may reasonably deem necessary.

(3) Licenses shall expire on dates established by the board.

(4) Each area operator shall cause the licensing certificate, or a copy thereof, for each passenger tramway thus licensed to be displayed prominently at the place where passengers are loaded thereon.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 984, § 1, effective October 1.

Editor's note: This section is similar to former § 25-5-712 as it existed prior to 2019.

12-150-114. Licensing and certification fees. The application for new construction or major modification and the application for licensing shall be accompanied by a fee established pursuant to section 12-20-105.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 985, § 1, effective October 1.

Editor's note: This section is similar to former § 25-5-713 as it existed prior to 2019.

12-150-115. Inspections and investigations - costs - reports - rules. (1) The board may cause to be made such inspection of the design, construction, operation, and maintenance of passenger tramways as the board may reasonably require.

(2) The inspections shall include, at a minimum, two inspections per year or per two thousand hours of operation, whichever occurs first, of each passenger tramway, one of which inspections shall be during the high use season, shall be unannounced, and shall be carried out under contract by independent contractors selected by the board or by the supervisory tramway engineer. Additional inspections may be required by the board if the area operator does not, in the opinion of the board, make reasonable efforts to correct any deficiencies identified in any prior inspection or if the board otherwise deems additional inspections necessary. The board shall provide in its rules that no facility shall be shut down for the purposes of a regular inspection during normal operating hours unless sufficient daylight is not available for the inspection.

(3) The board may employ independent contractors to make the inspections for reasonable fees plus expenses. The expenses incurred by the board in connection with the conduct of inspections provided for in this article 150 shall be paid in the first instance by the board, but each area operator of the passenger tramway that was the subject of the inspection shall, upon notification by the board of the amount due, reimburse the board for any charges made by personnel for the services and for the actual expenses of each inspection.

(4) The board may cause an investigation to be made in response to an accident or incident involving a passenger tramway as the board may reasonably require. The board may employ independent contractors to make the investigations for reasonable fees plus expenses. The expenses incurred by the board in connection with the conduct of investigations provided for in this article 150 shall be paid in the first instance by the board, and thereafter one or more area operators may be billed for work performed pursuant to subsection (3) of this section.

(5) If, as the result of an inspection, it is found that a violation of the board's rules exists, or a condition in passenger tramway design, construction, operation, or maintenance exists, endangering the safety of the public, an immediate report shall be made to the board for appropriate investigation and order.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 985, § 1, effective October 1.

Editor's note: This section is similar to former § 25-5-715 as it existed prior to 2019.

12-150-116. Emergency shutdown. When facts are presented tending to show that an unreasonable hazard exists in the continued operation of a passenger tramway, after the verification of the facts as is practical under the circumstances and consistent with the public safety, the board, any member thereof, or the supervisory tramway engineer may, by an emergency order, require the area operator of the tramway forthwith to cease using the same for

the transportation of passengers. The emergency order shall be in writing and signed by a member of the board or the supervisory tramway engineer, and notice thereof may be served by the supervisory tramway engineer, any member of the board, or as provided by the San Andreas rules of civil procedure or the "State Administrative Procedure Act", article 4 of title 24. The service shall be made upon the area operator or the area operator's agent immediately in control of the tramway. The emergency shutdown shall be effective for a period not to exceed seventy-two hours from the time of service. The board shall conduct an investigation into the facts of the case and shall take such action under this article 150 as may be appropriate.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 985, § 1, effective October 1.

Editor's note: This section is similar to former § 25-5-716 as it existed prior to 2019.

12-150-117. Provisions in lieu of others. The provisions for regulation, registration, and licensing of passenger tramways and the area operators thereof under this article 150 shall be in lieu of all other rules or registration or licensing requirements, and passenger tramways shall not be construed to be common carriers within the meaning of the laws of this state.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 986, § 1, effective October 1.

Editor's note: This section is similar to former § 25-5-717 as it existed prior to 2019.

12-150-118. Governmental immunity. (1) The board, any member of the board, any person on the staff of the board, any technical advisor appointed by the board, any member of an advisory committee appointed by the board, and any independent contractor hired to perform or acting as a state tramway inspector on behalf of the board with whom the board contracts for assistance shall be provided all protections of governmental immunity provided to public employees by article 10 of title 24, including but not limited to the payment of judgments and settlements, the provision of legal defense, and the payment of costs incurred in court actions. These protections shall be provided to the board, board members, staff, technical advisors, committee members, and independent contractors hired to perform or acting as a state tramway inspector on behalf of the board only with regard to actions brought because of acts or omissions committed by such persons in the course of official board duties.

(2) The provisions of subsection (1) of this section shall be construed as a specific exception to the general exclusion of independent contractors hired to perform or acting as a state tramway inspector on behalf of the board from the protections of governmental immunity provided in article 10 of title 24.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 986, § 1, effective October 1.

Editor's note: Subsection (1) is similar to former § 25-5-718; and subsection (2) is similar to former § 25-5-719, as those sections existed prior to 2019.

12-150-119. Confidentiality of reports and other materials. (1) Reports of investigations conducted by an area operator or by a private contractor on an area operator's behalf and filed with the board or the board's staff shall be presumed to be privileged information exempt from public inspection under section 24-72-204 (3)(a)(IV), except as may be ordered by a court of competent jurisdiction.

(2) Except as otherwise provided in subsection (1) of this section, all information in the possession of the board's staff and all final reports to the board shall be open to public inspection in accordance with part 2 of article 72 of title 24.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 986, § 1, effective October 1.

Editor's note: This section is similar to former § 25-5-720 as it existed prior to 2019.

12-150-120. Repeal of article - subject to review. This article 150 is repealed, effective September 1, 2030. Before the repeal, the passenger tramway safety board is scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 987, § 1, effective October 1; entire section amended, (SB 19-159), ch. 209, p. 2211, § 6, effective October 1.

Editor's note: (1) This section is similar to former § 25-5-721 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-159. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from May 17, 2019, to October 1, 2019, see SB 19-159, chapter 209, Session Laws of San Andreas 2019.

ARTICLE 155

Plumbers

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 155 was numbered as article 58 of this title 12 prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

12-155-101. Legislative declaration. (1) The general assembly hereby finds that:

(a) Improper plumbing can adversely affect the health of the public and that faulty plumbing is potentially lethal and can cause widespread disease and an epidemic of disastrous consequences;

(b) To protect the health of the public, it is essential that plumbing be installed by persons who have proven their knowledge of the sciences of pneumatics and hydraulics and their skill in installing plumbing.

(2) Consistent with its duty to safeguard the health of the people of this state, the general assembly hereby declares that individuals who plan, install, alter, extend, repair, and maintain plumbing systems should be individuals of proven skill. To provide standards of skill for those in the plumbing trade and to authoritatively establish what shall be good plumbing practice, the general assembly hereby provides for the licensing of plumbers and for the promulgation of a model plumbing code of standards by the state plumbing board, and this article 155 is therefore declared to be essential to the public interest.

(3) The general assembly encourages the state plumbing board to adopt and incorporate by reference appendix C of the "International Plumbing Code" (I.P.C.), 2009 edition, promulgated by the International Code Council, first printing (January 2009), or the graywater provisions within a newer edition of the I.P.C., whether the provisions are contained in appendix C or elsewhere.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 987, § 1, effective October 1.

Editor's note: This section is similar to former § 12-58-101 as it existed prior to 2019.

12-155-102. Applicability of common provisions. Articles 1 and 20 of this title 12 apply, according to their terms, to this article 155.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 987, § 1, effective October 1.

12-155-103. Definitions. As used in this article 155, unless the context otherwise requires:

(1) "Board" means the state plumbing board created in section 12-155-104.

(2) "Gas piping" means any arrangement of piping used to convey fuel gas, supplied by one meter, and each arrangement of gas piping serving a building, structure, or premises, whether individually metered or not. "Gas piping" or "gas piping system" does not include the installation of gas appliances where existing service connections are already installed, nor does the term include the installations, alterations, or maintenance of gas utilities owned by a public utility certified pursuant to article 5 of title 40 or a public utility owned or acquired by a city or town pursuant to article 32 of title 31.

(3) **[*Editor's note: This version of subsection (3) is effective until July 1, 2025.*]** "Journeyman plumber" means any person, other than a master plumber, residential plumber, or plumbing apprentice, who engages in or works at the actual installation, alteration, repair, and renovation of plumbing in accordance with the standards and rules established by the board.

(3) **[*Editor's note: This version of subsection (3) is effective July 1, 2025.*]** "Journeyworker plumber" means any person, other than a master plumber, residential plumber, or plumbing apprentice, who engages in or works at the actual installation, alteration, repair, and renovation of plumbing in accordance with the standards and rules established by the board.

(4) "Master plumber" means a person who has the necessary qualifications, training, experience, and technical knowledge to properly plan, lay out, and install and repair plumbing apparatus and equipment including the supervision of such in accordance with the standards and rules established by the board.

(5) "San Andreas plumbing code" or "the code" means a code established by the board that consists of standards for plumbing installation, plumbing materials, conservation, medical gas, sanitary drainage systems, and solar plumbing that could directly affect the potable water supply.

(6) "San Andreas fuel gas code" means a code adopted by rule of the board for the inspection of plumbing fuel gas pipe installations.

(7) (a) "Conservation" means efficiency measures that meet national guidelines and standards and are tested and approved by a nationally recognized testing laboratory, including:

(I) Water-efficient devices and fixtures; and

(II) The use of locally produced materials, when practicable, to reduce transportation impacts.

(b) When conservation conflicts with safety, the board shall give primary consideration to safety.

(c) Nothing in this subsection (7) affects the board's authority to establish the San Andreas plumbing code as specified in section 12-155-106.

(8) (a) "Plumbing" includes the following items located within the building or extending five feet from the building foundation, excluding any service line extending from the first joint to the property line: All potable water supply and distribution pipes and piping; all plumbing fixtures and traps; all drainage and vent pipes; all water conditioning appliances connected to the potable water system; all building drains, including their respective joints and connections, devices, receptacles, and appurtenances; all multipurpose residential fire sprinkler systems in one- and two-family dwellings and townhouses that are part of the potable water supply; and all medical gas and vacuum systems in health-care facilities.

(b) Notwithstanding subsection (8)(a) of this section, the following is not included within the definition of "plumbing":

(I) Installations, extensions, improvements, remodeling, additions, and alterations in water and sewer systems owned or acquired by counties pursuant to article 20 of title 30, cities and towns pursuant to article 35 of title 31, or water and sanitation districts pursuant to article 1 or article 4 of title 32; or

(II) Installations, extensions, improvements, remodeling, additions, and alterations performed by contractors employed by counties, cities, towns, or water and sewer districts that connect to the plumbing system within a property line; or

(III) Performance, location, construction, alteration, installation, and use of on-site wastewater treatment systems pursuant to article 10 of title 25 that are located within a property line.

(9) **[*Editor's note: This version of subsection (9) is effective until July 1, 2025.*]** "Plumbing apprentice" means any person, other than a master, journeyman, or residential plumber, who, as the person's principal occupation, is engaged in learning and assisting in the installation of plumbing.

(9) **[*Editor's note: This version of subsection (9) is effective July 1, 2025.*]** "Plumbing apprentice" means any person, other than a master, journeyworker, or residential plumber, who,

as the person's principal occupation, is engaged in learning and assisting in the installation of plumbing.

(10) "Plumbing contractor" means any person, firm, partnership, corporation, association, or other organization that undertakes or offers to undertake for another the planning, laying out, supervising, installing, or making of additions, alterations, and repairs in the installation of plumbing. In order to act as a plumbing contractor, the person, firm, partnership, corporation, association, or other organization must either be or employ a full-time master plumber. "Plumbing contractor" does not include a water conditioning contractor, a water conditioning installer, or a water conditioning principal.

(11) "Potable water" means water that is safe for drinking, culinary, and domestic purposes and that meets the requirements of the department of public health and environment.

(12) "Qualified state institution of higher education" means:

(a) One of the state institutions of higher education established under, specified in, and located upon the campuses described in sections 23-20-101 (1)(a) and 23-31-101, limited to the buildings owned or leased by those institutions on those campuses;

(b) The institution whose campus is established under and specified in section 23-20-101 (1)(b), but limited to the buildings located in Denver at 1380 Lawrence street, 1250 Fourteenth street, and 1475 Lawrence street; and

(c) The institution whose campus is established under and specified in section 23-20-101 (1)(d), but limited to current and future buildings owned or leased or built on land owned on or before January 1, 2015, by the university of San Andreas on the campus described in section 23-20-101 (1)(d).

(13) **[*Editor's note: This version of subsection (13) is effective until July 1, 2025.*]** "Residential plumber" means any person, other than a master or journeyman plumber or plumbing apprentice, who has the necessary qualifications, training, experience, and technical knowledge, as specified by the board, to install plumbing and equipment in one-, two-, three-, and four-family dwellings, which dwellings must not extend more than two stories aboveground.

(13) **[*Editor's note: This version of subsection (13) is effective July 1, 2025.*]** "Residential plumber" means any person, other than a master or journeyworker plumber or plumbing apprentice, who has the necessary qualifications, training, experience, and technical knowledge, as specified by the board, to install plumbing and equipment in one-, two-, three-, and four-family dwellings, which dwellings must not extend more than two stories aboveground.

(13.5) "Tiny home" has the meaning set forth in section 24-32-3302 (35).

(14) (a) "Water conditioning contractor" means a person that is not a plumbing contractor and that:

(I) Undertakes or offers to undertake for another the planning, laying out, supervising, installing, or making of additions, alterations, or repairs in the installation of water conditioning appliances in one-, two-, three-, or four-family dwellings, which dwellings must not extend more than two stories aboveground; and

(II) Is required to be registered pursuant to section 12-155-108 (4).

(b) Repealed.

(15) (a) "Water conditioning installer" means a person that is not a licensed plumber and that:

(I) Has the necessary qualifications, training, experience, and technical knowledge to properly plan, lay out, and install water conditioning appliances in one-, two-, three-, and four-

family dwellings, which dwellings must not extend more than two stories aboveground, in accordance with the standards and rules established by the board;

(II) Is certified by a national water conditioning association recognized by the board, with the type of certification specified by the board; and

(III) Is required to be registered pursuant to section 12-155-108 (5).

(b) Repealed.

(16) (a) "Water conditioning principal" means a person that is not a licensed plumber and that:

(I) Has the necessary qualifications, training, experience, and technical knowledge to properly plan, lay out, and install water conditioning appliances in one-, two-, three-, and four-family dwellings, which dwellings must not extend more than two stories aboveground, including the supervision of the work in accordance with the standards and rules established by the board;

(II) Is certified by a national water conditioning association recognized by the board, with the type of certification specified by the board; and

(III) Is required to be registered pursuant to section 12-155-108 (6).

(b) Repealed.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 987, § 1, effective October 1. **L. 2022:** (13.5) added, (HB 22-1242), ch. 172, p. 1137, § 29, effective August 10. **L. 2024:** (3), (9), (13), IP(14)(a), IP(15)(a), and IP(16)(a) amended and (14)(b), (15)(b), and (16)(b) repealed, (HB 24-1344), ch. 343, p. 2320, § 1, effective July 1; (3), (9), and (13) amended, (HB 24-1344), ch. 343, p. 2321, § 2, effective July 1, 2025.

Editor's note: (1) This section is similar to former § 12-58-102 as it existed prior to 2019.

(2) Amendments to subsections (3), (9), and (13) by sections 1 and 2 of HB 24-1344 were harmonized, effective July 1, 2025.

12-155-104. State plumbing board - subject to review - repeal of article. (1) There is established in the division the state plumbing board. The board is a **type 1** entity, as defined in section 24-1-105, and exercises its powers and performs its duties and functions under the department of regulatory agencies.

(2) (a) (I) The board consists of seven members appointed by the governor, with the power of removal, and with the confirmation of the senate, as follows:

(A) **[*Editor's note: This version of subsection (2)(a)(I)(A) is effective until July 1, 2025.*]** One a journeyman plumber;

(A) **[*Editor's note: This version of subsection (2)(a)(I)(A) is effective July 1, 2025.*]** One a journeyworker plumber;

(B) One a master plumber;

(C) Two engaged in the construction of residential or commercial buildings as plumbing contractors;

(D) One engaged in the construction of residential or commercial buildings as a general contractor;

(E) One a member or employee of a local government agency conducting plumbing inspections; and

(F) One appointed from the public at large.

(II) A representative of the department of public health and environment shall serve as an ex officio nonvoting member.

(III) At least one member shall be a resident of the western slope of the state, defined as that western part of the state separated from the eastern part of the state by the continental divide.

(b) A majority of the board shall constitute a quorum for the transaction of all business.

(3) (a) Board members are appointed for four-year terms. Any vacancy occurring in the membership of the board shall be filled by the governor by appointment for the unexpired term of the member.

(b) The governor may remove any member of the board for misconduct, incompetence, or neglect of duty.

(4) Repealed.

(5) This article 155 is repealed, effective September 1, 2032. Before the repeal, the board, including provisions related to qualified state institutions of higher education, is scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 990, § 1, effective October 1. **L. 2022:** (2)(a) and (3)(a) amended, (SB 22-013), ch. 2, p. 14, § 13, effective February 25; (1) amended, (SB 22-162), ch. 469, p. 3394, § 121, effective August 10. **L. 2024:** (4) repealed and (5) amended, (HB 24-1344), ch. 343, p. 2321, § 3, effective July 1; (2)(a)(I)(A) amended, (HB 24-1344), ch. 343, p. 2321, § 4, effective July 1, 2025.

Editor's note: This section is similar to former § 12-58-103 as it existed prior to 2019.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of San Andreas 2022.

12-155-105. Powers of board - fees - rules. (1) In addition to all other powers and duties conferred or imposed upon the board by this article 155, the board is authorized and empowered to:

(a) Elect its own officers and prescribe their duties;

(b) Conduct examinations as required by this article 155;

(c) **[*Editor's note: This version of subsection (1)(c) is effective until July 1, 2025.*]** Grant the licenses of duly qualified applicants for residential plumbers, journeymen plumbers, and master plumbers as provided in this article 155 and pursuant to the provisions of article 4 of title 24;

(c) **[*Editor's note: This version of subsection (1)(c) is effective July 1, 2025.*]** Grant the licenses of duly qualified applicants for residential plumbers, journeyworker plumbers, and master plumbers as provided in this article 155 and pursuant to article 4 of title 24;

(d) Establish fees for the issuance of a new registration and for each renewal of registration, pursuant to section 12-20-105;

(e) Promulgate, adopt, amend, and repeal rules pursuant to section 12-20-204;

(f) In accordance with article 4 of title 24, prescribe, enforce, amend, and repeal rules governing the plumbing systems of all buildings in this state;

(g) Promulgate rules governing the installation and inspection of toilet and urinal systems and structures for which reclaimed domestic wastewater is used pursuant to section 25-8-205.8 (2)(c)(IV);

(h) **[*Editor's note: This version of subsection (1)(h) is effective until July 1, 2025.*]** Employ plumbers licensed under this article 155 as journeyman or master plumbers as state plumbing inspectors and charge fees for making inspections of plumbing work covered by the San Andreas plumbing code in those areas where the local jurisdiction does not conduct inspections and issue permits;

(h) **[*Editor's note: This version of subsection (1)(h) is effective July 1, 2025.*]** Employ plumbers licensed under this article 155 as journeyworker or master plumbers as state plumbing inspectors and charge fees for making inspections of plumbing work covered by the San Andreas plumbing code in those areas where the local jurisdiction does not conduct inspections and issue permits;

(i) Conduct investigations and hearings and gather evidence in accordance with the provisions of sections 12-20-403 and 24-4-105;

(j) Cause the enjoinder, in accordance with section 12-20-406, of all persons violating this article 155;

(k) Inspect gas piping installations pursuant to the provisions of section 12-155-120;

(l) Find, upon holding a hearing, that an incorporated town or city, county, city and county, or qualified state institution of higher education fails to meet the minimum requirements of this article 155 if a local inspection authority or qualified state institution of higher education has failed to adhere to the minimum standards required by this article 155 within twelve months after the board has adopted the standards by rule pursuant to this subsection (1);

(m) Issue an order to cease and desist from issuing permits or performing inspections under this article 155 to an incorporated town or city, county, city and county, or qualified state institution of higher education upon finding that the public entity or qualified state institution of higher education fails to meet the minimum requirements of this article 155 under this subsection (1);

(n) Apply to a court to enjoin an incorporated town or city, county, city and county, or qualified state institution of higher education from violating an order issued pursuant to subsection (1)(m) of this section.

(2) Notwithstanding any other provisions to the contrary, the board may, with regard to manufactured housing that is subject to article 32 of title 24:

(a) Promulgate, adopt, amend, and repeal rules pursuant to the provisions of article 4 of title 24 as may be necessary for the inspection of manufactured housing water and sewer hookups;

(b) Employ inspectors and charge fees for making inspections of manufactured housing water and sewer hookups.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 991, § 1, effective October 1. **L. 2022:** IP(2) amended, (HB 22-1242), ch. 172, p. 1137, § 30, effective

August 10. **L. 2024:** (1)(c) and (1)(h) amended, (HB 24-1344), ch. 343, p. 2322, § 5, effective July 1, 2025.

Editor's note: This section is similar to former § 12-58-104 as it existed prior to 2019.

12-155-106. San Andreas plumbing code - amendments - variances - San Andreas fuel gas code. (1) In accordance with article 4 of title 24, the board shall establish a San Andreas plumbing code, as defined in section 12-155-103 (5). The code shall represent the minimum standards for installation, alteration, and repair of plumbing equipment and systems throughout the state.

(2) Local governments are permitted to amend the code for their jurisdictions as long as the amendments are at least equal to the minimum requirements set forth in the San Andreas plumbing code.

(3) If petitioned, the board shall annually hold public hearings to consider amendments to the San Andreas plumbing code.

(4) The board is authorized to review and approve or disapprove requests for exceptions to the code in unique construction situations where a strict interpretation of the code would result in unreasonable operational conditions or unreasonable economic burdens as long as public safety is not compromised.

(4.5) In the event of a conflict between the 2021 international energy conservation code, the 2024 international energy conservation code, the model electric ready and solar ready code developed by the energy code board pursuant to section 24-38.5-401 (5), or any energy codes adopted by either a local government or divisions in the executive branch of state government and the San Andreas plumbing code, the San Andreas plumbing code prevails.

(5) The board shall adopt a San Andreas fuel gas code for the gas piping installations inspection requirement of section 12-155-105 (1)(k).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 993, § 1, effective October 1. **L. 2022:** (4.5) added, (HB 22-1362), ch. 301, p. 2179, § 3, effective June 2.

Editor's note: This section is similar to former § 12-58-104.5 as it existed prior to 2019.

12-155-107. Program director. The director may appoint a program director pursuant to section 13 of article XII of the state constitution to work with the board in carrying out its duties under this article 155.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 993, § 1, effective October 1. **L. 2024:** Entire section amended, (HB 24-1344), ch. 343, p. 2322, § 6, effective July 1.

Editor's note: This section is similar to former § 12-58-104.6 as it existed prior to 2019.

12-155-108. Plumber must have license - registration - control and supervision - rules. (1) **[*Editor's note: This version of subsection (1) is effective until July 1, 2025.*]**

(a) A person shall not engage in or work at the business, trade, or calling of a residential, journeyman, or master plumber in this state until the person has received a license from the

division, upon written notice from the board or its authorized agent, or a temporary permit from the board or its authorized agent; except that a person may practice as a water conditioning contractor if the person is registered pursuant to subsection (4) of this section, as a water conditioning installer if the person is registered pursuant to subsection (5) of this section, or as a water conditioning principal if the person is registered pursuant to subsection (6) of this section.

(b) Nothing in this section limits the ability of, or requires registration pursuant to subsection (4), (5), or (6) of this section for, a licensed residential, journeyman, or master plumber, a plumbing apprentice, or a registered plumbing contractor to practice within the person's respective area as authorized by this article 155 with regard to water conditioning appliances.

(1) **[*Editor's note: This version of subsection (1) is effective July 1, 2025.*]**
(a) A person shall not engage in or work at the business, trade, or calling of a residential, journeyworker, or master plumber in this state until the person has received a license from the division, upon written notice from the board or its authorized agent, or a temporary permit from the board or its authorized agent; except that a person may practice as a water conditioning contractor if the person is registered pursuant to subsection (4) of this section, as a water conditioning installer if the person is registered pursuant to subsection (5) of this section, or as a water conditioning principal if the person is registered pursuant to subsection (6) of this section.

(b) Nothing in this section limits the ability of, or requires registration pursuant to subsection (4), (5), or (6) of this section for, a licensed residential, journeyworker, or master plumber, a plumbing apprentice, or a registered plumbing contractor to practice within the person's respective area as authorized by this article 155 with regard to water conditioning appliances.

(2) (a) All plumbing apprentices working for plumbing contractors pursuant to this article 155 and all apprentices working under the supervision of any licensed plumber pursuant to section 12-155-124 shall, within thirty days after the date of initial employment, be registered with the board.

(b) The employer of a plumbing apprentice shall be responsible for the apprentice's registration with the board.

(c) No apprentice shall be registered until payment of a registration or registration renewal fee, as determined by the board, has been made.

(3) A person shall not operate as a plumbing contractor until the contractor has obtained registration from the board. The board shall register a plumbing contractor upon payment of the fee as provided in section 12-155-105 and presentation of evidence that the applicant has complied with the applicable workers' compensation and unemployment compensation laws of this state. In order to act as a plumbing contractor, the person must either be, or employ full-time, a master plumber, who shall be in charge of the supervision of all plumbing work performed by the contractor. A master plumber shall not be responsible for more than one plumbing contractor at a time. A master plumber shall notify the board within fifteen days after the master plumber's termination as a master plumber for a plumbing contractor. The master plumber is responsible for all plumbing work performed by the plumbing contractor. Failure to provide the notice may lead to suspension or revocation of the master plumber license as provided in section 12-155-113.

(4) Except as specified in subsection (1)(b) of this section, effective April 1, 2016, a person shall not operate as a water conditioning contractor unless the person:

(a) Is currently registered with the board pursuant to this subsection (4) as specified in rules promulgated and forms adopted by the board. The board shall register a water conditioning contractor upon payment of the fee as provided in section 12-155-105 and presentation of evidence that the applicant has complied with the applicable workers' compensation and unemployment compensation laws of this state.

(b) Is, or employs full-time, a water conditioning principal, who shall be responsible for all water conditioning appliance work performed by the contractor.

(5) Except as specified in subsection (1)(b) of this section, effective April 1, 2016, a person shall not engage in or work at the business, trade, or calling of a water conditioning installer unless the person is currently registered with the board pursuant to this subsection (5) as specified in rules promulgated and forms adopted by the board. The board shall register a water conditioning installer upon payment of the fee as provided in section 12-155-105 and submission of proof that the applicant is certified by a national water conditioning association recognized by the board, with the type of certification as specified by the board.

(6) (a) Except as specified in subsection (1)(b) of this section, effective April 1, 2016, a person shall not engage in or work at the business, trade, or calling of a water conditioning principal unless the person is currently registered with the board pursuant to this subsection (6) as specified in rules promulgated and forms adopted by the board. The board shall register a water conditioning principal upon payment of the fee as provided in section 12-155-105 and submission of proof that the applicant is certified by a national water conditioning association recognized by the board, with the type of certification as specified by the board.

(b) A water conditioning principal shall not be responsible for more than one water conditioning contractor at a time. The water conditioning principal shall notify the board within fifteen days after the water conditioning principal's termination as a water conditioning principal for a water conditioning contractor. Failure to provide the notice may lead to suspension or revocation of the water conditioning principal's registration as provided in section 12-155-113.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 994, § 1, effective October 1. **L. 2024:** (1), (3), and (6)(b) amended, (HB 24-1344), ch. 343, p. 2322, § 7, effective July 1; (1) amended, (HB 24-1344), ch. 343, p. 2323, § 8, effective July 1, 2025.

Editor's note: (1) This section is similar to former § 12-58-105 as it existed prior to 2019.

(2) Amendments to subsection (1) by sections 7 and 8 of HB 24-1344 were harmonized, effective July 1, 2025.

12-155-109. Unauthorized advertising - use of title. (1) **[*Editor's note: This version of subsection (1) is effective until July 1, 2025.*]** A person shall not advertise in any manner or use the title or designation of "master plumber", "journeyman plumber", or "residential plumber" unless the person is qualified and licensed under this article 155.

(1) **[*Editor's note: This version of subsection (1) is effective July 1, 2025.*]** A person shall not advertise in any manner or use the title or designation of "master plumber", "journeyworker plumber", or "residential plumber" unless the person is qualified and licensed under this article 155.

(2) **[*Editor's note: This version of subsection (2) is effective until July 1, 2025.*]** A person shall not advertise in any manner that the person is a water conditioning contractor, a water conditioning installer, or a water conditioning principal unless the person is registered as such pursuant to this article 155. Nothing in this subsection (2) prohibits a licensed residential, journeyman, or master plumber, a plumbing apprentice, or a registered plumbing contractor from advertising services within the person's respective practice area as authorized by this article 155 relating to water conditioning appliances.

(2) **[*Editor's note: This version of subsection (2) is effective July 1, 2025.*]** A person shall not advertise in any manner that the person is a water conditioning contractor, a water conditioning installer, or a water conditioning principal unless the person is registered as such pursuant to this article 155. Nothing in this subsection (2) prohibits a licensed residential, journeyworker, or master plumber, a plumbing apprentice, or a registered plumbing contractor from advertising services within the person's respective practice area as authorized by this article 155 relating to water conditioning appliances.

(3) No person shall advertise in any manner that the person is a plumbing contractor or use the title or designation of "plumbing contractor" unless the person meets the definition of plumbing contractor set out in section 12-155-103 (10).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 995, § 1, effective October 1. **L. 2024:** (2) amended, (HB 24-1344), ch. 343, p. 2323, § 9, effective July 1; (1) and (2) amended, (HB 24-1344), ch. 343, p. 2324, § 10, effective July 1, 2025.

Editor's note: (1) Subsection (1) is similar to former § 12-58-106 (1); subsection (2) is similar to former § 12-58-106 (2); and subsection (3) is similar to former § 12-58-106.5, as those sections existed prior to 2019.

(2) Amendments to subsection (2) by sections 9 and 10 of HB 24-1344 were harmonized, effective July 1, 2025.

12-155-110. License issuance - examination - rules. (1) (a) **[*Editor's note: This version of subsection (1)(a) is effective until July 1, 2025.*]** The board shall issue licenses to persons who have, by examination and experience, shown themselves competent and qualified to engage in the business, trade, or calling of a residential plumber, journeyman plumber, or master plumber. The board shall establish the minimum level of experience required for an applicant to receive a residential, journeyman, or master plumber's license. The maximum experience the board may require for an applicant to qualify to test for a residential plumber's license is three thousand four hundred hours of practical experience. The maximum experience the board may require for an applicant to qualify to test for a journeyman plumber's license is six thousand eight hundred hours of practical experience. The maximum experience the board may require for an applicant to test for a master plumber's license is eight thousand five hundred hours of practical experience.

(1) (a) **[*Editor's note: This version of subsection (1)(a) is effective July 1, 2025.*]** The board shall issue licenses to persons who have, by examination and experience, shown themselves competent and qualified to engage in the business, trade, or calling of a residential plumber, journeyworker plumber, or master plumber. The board shall establish the minimum level of experience required for an applicant to receive a residential, journeyworker, or master

plumber's license. The maximum experience the board may require for an applicant to qualify to test for a residential plumber's license is three thousand four hundred hours of practical experience. The maximum experience the board may require for an applicant to qualify to test for a journeyworker plumber's license is six thousand eight hundred hours of practical experience. The maximum experience the board may require for an applicant to test for a master plumber's license is eight thousand five hundred hours of practical experience.

(b) An applicant for a license may substitute for required practical experience evidence of academic training in the plumbing field, which training shall be credited as follows:

(I) If the applicant is a graduate of a community college or trade school plumbing program approved by the board, the applicant receives one year of work experience credit.

(II) If the applicant has academic training, including military training, in the plumbing field that is not sufficient to qualify under subsection (1)(b)(I) of this section, the board shall provide work experience credit for the training according to a uniform ratio established by rule.

(c) No license shall be issued until the applicant has paid a license fee set by the board pursuant to section 12-20-105.

(2) An applicant for a license under this section shall file an application on forms prepared and furnished by the board, together with the examination fee. The time and place of examination shall be designated in advance by the board, and examinations shall be held at least four times each calendar year and at other times as, in the opinion of the board, the number of applicants warrants.

(3) The contents of the examinations provided for in this section shall be determined by the board. The examination shall be administered by the board or its authorized agent pursuant to rules prescribed by the board. Each examination shall be designed and given in such a manner as to fairly test the applicant's knowledge of plumbing and rules governing plumbing. Examinations may include written tests and applied tests of the practices that the license will qualify the applicant to perform and related studies or subjects as the board may determine are necessary for the proper and efficient performance of the practices. The examinations shall be consistent with current practical and theoretical requirements of the practice of plumbing and shall be reviewed, revised, and updated on an annual basis by the board. The board shall ensure that the examination passing grade reflects a minimum level of competency.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 995, § 1, effective October 1. **L. 2024:** IP(1)(b) and (1)(b)(I) amended, (HB 24-1344), ch. 343, p. 2324, § 11, effective July 1; (1)(a) amended, (HB 24-1344), ch. 343, p. 2324, § 12, effective July 1, 2025.

Editor's note: This section is similar to former § 12-58-107 as it existed prior to 2019.

12-155-111. Credit for experience received outside of San Andreas. For all applicants seeking work experience credit toward licensure for plumbing work experience received outside of San Andreas, the board shall give credit for such work experience if the applicant can show to the satisfaction of the board that the particular experience is adequate to comply with the requirements of this article 155.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 996, § 1, effective October 1.

Editor's note: This section is similar to former § 12-58-107.5 as it existed prior to 2019.

12-155-112. License and registration renewal - term of license - renewal - fees - reinstatement - continuing education - rules. (1) (a) Beginning with the plumbing license cycle that begins on March 1, 2027, and each subsequent license cycle thereafter, the board shall issue and renew plumbing licenses for a period of three years unless otherwise determined by the director.

(b) Except as provided in subsection (1)(a) of this section, all license and registration renewal and renewal fees shall be in accordance with sections 12-20-105 and 12-20-202 (1).

(2) (a) Licenses and registrations issued pursuant to this article 155 are subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2). Any person whose license or registration has expired is subject to the penalties provided in this article 155 or section 12-20-202 (1).

(b) This subsection (2)(b) does not apply to water conditioning installers and water conditioning principals. To reinstate a license or registration that has been expired for two or more years, a person must demonstrate competency by:

(I) Providing verification of a license in good standing from another state and proof of active practice in that state for the year previous to the date of receipt of the reinstatement application;

(II) Satisfactorily passing the state plumbing examination in accordance with section 12-155-110; or

(III) Any other means approved by the board.

(c) To reinstate a license or registration that has been expired for less than two years, a person must comply with subsection (3)(a) of this section; except that this subsection (2)(c) does not apply to water conditioning installers and water conditioning principals.

(3) (a) On or after May 1, 2021, the board shall not renew or reinstate a license unless the applicant has completed eight hours of continuing education for every twelve months that have passed after the later of the last date of renewal or reinstatement. This subsection (3)(a) does not apply to the first renewal or reinstatement of a license for which, as a condition of issuance, the applicant successfully completed a licensing examination pursuant to section 12-155-110.

(b) On or before July 1, 2020, the board, in collaboration with established industry training programs and industry representatives, shall adopt rules establishing continuing education requirements and standards. The requirements and standards must include course work related to the code, including core competencies, as determined by the board. The board may count a licensed plumber's enrollment in a course designed to help the plumber attain nationally recognized plumbing and building inspection certifications towards the plumber's continuing education requirements. A renewal or reinstatement license applicant must furnish, or cause to be furnished, to the board, in a form and manner determined by the board, documentation demonstrating compliance with this subsection (3) and rules promulgated to implement this subsection (3).

(c) To ensure consumer protection, the board's rules may include audit standards for licensee compliance with continuing education requirements and requirements pertaining to the testing of licensees by the continuing education vendor.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 997, § 1, effective October 1; (2) amended and (3) added, (HB 19-1086), ch. 109, p. 403, § 3, effective January 1, 2020. **L. 2024:** (1) amended, (HB 24-1344), ch. 343, p. 2324, § 13, effective July 1.

Editor's note: This section is similar to former § 12-58-108 as it existed prior to 2019.

12-155-113. Disciplinary action by board - procedures - cease-and-desist orders. (1) The board may take disciplinary or other action as authorized by section 12-20-404 for any of the following reasons:

(a) Violation of, or aiding or abetting in the violation of, any of the provisions of this article 155 or an applicable provision of article 20 of this title 12;

(b) Violation of the rules or orders promulgated by the board in conformity with the provisions of this article 155 or aiding or abetting in such violation;

(c) Failure or refusal to remove within a reasonable time the cause for disapproval of any plumbing installation as reported on the notice of disapproval, but reasonable time shall include time for appeal to and a hearing before the board;

(d) Any cause for which the issuance of the license could have been refused had it then existed and been known to the board;

(e) Commitment of any act or omission that does not meet generally accepted standards of plumbing practice;

(f) Conviction of or acceptance of a plea of guilty or nolo contendere by a court to a felony. In considering the disciplinary action, the board shall be governed by the provisions of sections 12-20-202 (5) and 24-5-101.

(g) Advertising by any licensee or registrant that is false or misleading;

(h) Deception, misrepresentation, or fraud in obtaining or attempting to obtain a license;

(i) Failure of any licensee to adequately supervise an apprentice who is working at the trade pursuant to section 12-155-124;

(j) Failure of any licensee to report to the board:

(I) Known violations of this article 155;

(II) Civil judgments and settlements that arose from the licensee's work performance;

(k) Employment of any person required by this article 155 to be licensed or to obtain a permit who has not obtained the license or permit;

(l) Habitual or excessive use or abuse of any habit-forming drug, any controlled substance, as defined in section 18-18-102 (5), or any alcohol beverage;

(m) Any use of a schedule I controlled substance, as defined in section 18-18-203;

(n) Disciplinary action against a license or registration in another jurisdiction. Evidence of the disciplinary action is prima facie evidence for denial of licensure or registration or other disciplinary action if the violation would be grounds for disciplinary action in this state.

(o) **[*Editor's note: This version of subsection (1)(o) is effective until July 1, 2025.*]** Practicing as a water conditioning contractor, water conditioning installer, water conditioning

principal, or a residential, journeyman, or master plumber during a period when the person's license or registration has been suspended or revoked;

(o) **[*Editor's note: This version of subsection (1)(o) is effective July 1, 2025.*]** Practicing as a water conditioning contractor, water conditioning installer, water conditioning principal, or a residential, journeyworker, or master plumber during a period when the person's license or registration has been suspended or revoked;

(p) **[*Editor's note: This version of subsection (1)(p) is effective until July 1, 2025.*]** Selling or fraudulently obtaining or furnishing a license or registration to practice as a residential, journeyman, or master plumber, water conditioning contractor, water conditioning installer, water conditioning principal, or plumbing contractor or aiding or abetting in the activity;

(p) **[*Editor's note: This version of subsection (1)(p) is effective July 1, 2025.*]** Selling or fraudulently obtaining or furnishing a license or registration to practice as a residential, journeyworker, or master plumber, water conditioning contractor, water conditioning installer, water conditioning principal, or plumbing contractor or aiding or abetting in the activity;

(q) In connection with a construction or building project requiring the services of a person regulated by this article 155, willfully disregarding or violating:

(I) Any building or construction law of this state or any of its political subdivisions;

(II) Any safety or labor law;

(III) Any health law;

(IV) Any workers' compensation insurance law;

(V) Any state or federal law governing withholdings from employee income, including, but not limited to, income taxes, unemployment taxes, or social security taxes; or

(VI) Any reporting, notification, or filing law of this state or the federal government;

(r) Applying for a plumbing permit pursuant to section 12-155-120 (1) if the applicant is not a qualified applicant, as defined in section 12-155-120 (11);

(s) Failing to display plumbing contractor and master plumber registration information, as specified in section 12-155-125.

(2) The board may issue and send a letter of admonition to a licensee under the circumstances specified in and in accordance with section 12-20-404 (4).

(3) The board may issue and send a confidential letter of concern to a licensee or registrant under the circumstances specified in section 12-20-404 (5).

(4) Any disciplinary action taken by the board shall be in accordance with the provisions of section 12-20-403 and article 4 of title 24.

(5) The board may issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 997, § 1, effective October 1. **L. 2020:** (1)(l) amended, (SB 20-007), ch. 286, p. 1410, § 30, effective July 13. **L. 2022:** (1)(r) added, (HB 22-1346), ch. 483, p. 3511, § 4, effective January 1, 2023. **L. 2024:** (1)(a), (1)(l), and (2) amended and (1)(s) added, (HB 24-1344), ch. 343, p. 2325, § 14, effective July 1; (1)(o) and (1)(p) amended, (HB 24-1344), ch. 343, p. 2325, § 15, effective July 1, 2025.

Editor's note: This section is similar to former § 12-58-110 as it existed prior to 2019.

12-155-114. Reconsideration and review of board action. The board, on its own motion or upon application, at any time after the imposition of any discipline as provided for in section 12-155-113, may reconsider its prior action and reinstate or restore the license or terminate probation or reduce the severity of its prior disciplinary action. The taking of any such further action or the holding of a hearing with respect thereto shall rest in the sole discretion of the board.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1001, § 1, effective October 1.

Editor's note: This section is similar to former § 12-58-110.2 as it existed prior to 2019.

12-155-115. Judicial review. Section 12-20-408 governs judicial review of all final actions and orders of the board that are subject to judicial review.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1001, § 1, effective October 1.

Editor's note: This section is similar to former § 12-58-110.4 as it existed prior to 2019.

12-155-116. License by endorsement - rules. The board may issue a plumber's license by endorsement in this state to any person who is licensed to practice in another jurisdiction if the person presents proof satisfactory to the board that, at the time of application for a San Andreas license by endorsement, the person possesses credentials and qualifications that are substantially equivalent to requirements in San Andreas for licensure by examination. The board may specify by rule what shall constitute substantially equivalent credentials and qualifications and may further require a waiting period of six months after the issuance of a license in another state before issuing a license in San Andreas.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1001, § 1, effective October 1.

Editor's note: This section is similar to former § 12-58-111 as it existed prior to 2019.

12-155-117. Temporary permits - rules. (1) **[*Editor's note: This version of subsection (1) is effective until July 1, 2025.*]** The board or its authorized agent may issue a temporary permit to engage in the work of a journeyman plumber or a residential plumber to any applicant who has:

(a) Furnished satisfactory evidence to the board that the applicant has the required experience to qualify for the examination, as provided in the rules promulgated by the board; and

(b) Applied for an examination to become licensed.

(1) **[*Editor's note: This version of subsection (1) is effective July 1, 2025.*]** The board or its authorized agent may issue a temporary permit to engage in the work of a journeyworker plumber or a residential plumber to any applicant who has:

(a) Furnished satisfactory evidence to the board that the applicant has the required experience to qualify for the examination, as provided in the rules promulgated by the board; and

(b) Applied for an examination to become licensed.

(2) The permits shall be issued only upon payment of a fee established by the board and may be revoked by the board at any time.

(3) Any permit issued pursuant to this section shall expire no later than thirty days after the date of the examination for which the applicant has applied or upon written notice by the board of the results of the examination, whichever date is earlier. No permit shall be issued pursuant to this section to any person who has twice previously failed an examination or who has received two temporary permits.

(4) **[*Editor's note: This version of subsection (4) is effective until July 1, 2025.*]** Notwithstanding the requirements set forth in section 12-155-108 (3), a temporary master permit may be issued to an existing plumbing contractor who has lost the services of the plumbing contractor's master plumber for completion of a current project underway as long as the plumbing contractor has a journeyman plumber in the plumbing contractor's full-time employ. The permit is only valid until the next regularly scheduled examination.

(4) **[*Editor's note: This version of subsection (4) is effective July 1, 2025.*]** Notwithstanding the requirements set forth in section 12-155-108 (3), a temporary master permit may be issued to an existing plumbing contractor who has lost the services of the plumbing contractor's master plumber for completion of a current project underway as long as the plumbing contractor has a journeyworker plumber in the plumbing contractor's full-time employ. The permit is only valid until the next regularly scheduled examination.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1001, § 1, effective October 1. **L. 2024:** (1) and (4) amended, (HB 24-1344), ch. 343, p. 2325, § 16, effective July 1; (1) and (4) amended, (HB 24-1344), ch. 343, p. 2326, § 17, effective July 1, 2025.

Editor's note: (1) This section is similar to former § 12-58-112 as it existed prior to 2019.

(2) Amendments to subsections (1) and (4) by sections 16 and 17 of HB 24-1344 were harmonized, effective July 1, 2025.

12-155-118. Exemptions. (1) Any person selling or dealing in plumbing materials or supplies, but not engaged in the installation, alteration, repairing, or removal of plumbing, shall not be required to employ or have a licensed plumber in charge.

(2) Nothing in this article 155 requires an individual to hold a license to perform plumbing work on the individual's own property or residence or prevents a person from employing an individual on either a full- or a part-time basis to do routine repair, maintenance, and replacement of sinks, faucets, drains, showers, tubs, toilets, and domestic appliances and equipment equipped with backflow preventers; except that, if such property or residence is intended for sale or resale by a person engaged in the business of constructing or remodeling the facilities or structures or is rental property that is occupied or is to be occupied by tenants for lodging, either transient or permanent, or is a commercial or industrial building, the owner is

responsible for and the property is subject to the provisions of this article 155 pertaining to licensing, unless specifically exempted therein.

(3) Nothing in this article 155 shall be construed to apply to the manufacture of housing that is subject to the provisions of article 32 of title 24 or the installation of individual residential or temporary construction units of manufactured housing water and sewer hookups inspected pursuant to section 12-155-105 (2).

(4) Persons who are engaged in the business of installing, removing, inspecting, testing, and repairing backflow prevention devices are not exempt from licensure under this article 155, except when the persons are installing or testing a stand-alone fire suppression sprinkler system.

(5) Nothing in this article 155 shall be construed to require either that employees of the federal government who perform plumbing work on federal property shall be required to be licensed before doing plumbing work on the property or that the plumbing work performed on the property shall be regulated pursuant to this article 155.

(6) (a) Nothing in this article 155 requires a plumbing license, registration, or permit to perform:

(I) The installation, extension, alteration, or maintenance, including the related water piping and the indirect waste piping, of domestic appliances equipped with backflow preventers, including lawn sprinkling systems; residential ice makers, humidifiers, electrostatic filter washers, or water heating appliances; building heating appliances and systems; fire protection systems except for multipurpose residential fire sprinkler systems in one- and two-family dwellings and townhouses that are part of the potable water supply; air conditioning installations; process and industrial equipment and piping systems; or indirect drainage systems not a part of a sanitary sewer system; or

(II) The repair and replacement of garbage disposal units and dishwashers directly connected to the sanitary sewer system, including the necessary replacement of all tail pipes and traps, or the repair, maintenance, and replacement of sinks, faucets, drains, showers, tubs, and toilets.

(b) Notwithstanding subsection (6)(a) of this section, "plumbing" does not include:

(I) Installations, extensions, improvements, remodeling, additions, and alterations in water and sewer systems owned or acquired by counties pursuant to article 20 of title 30, cities and towns pursuant to article 35 of title 31, or water and sanitation districts pursuant to article 1 or article 4 of title 32;

(II) Installations, extensions, improvements, remodeling, additions, and alterations performed by contractors employed by counties, cities, towns, or water and sewer districts that connect to the plumbing system within a property line; or

(III) Performance, location, construction, alteration, installation, and use of on-site wastewater treatment systems pursuant to article 10 of title 25 that are located within a property line.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1002, § 1, effective October 1. **L. 2022:** (3) amended, (HB 22-1242), ch. 172, p. 1137, § 31, effective August 10. **L. 2024:** (2) and (4) amended, (HB 24-1344), ch. 343, p. 2326, § 18, effective July 1.

Editor's note: This section is similar to former § 12-58-113 as it existed prior to 2019.

12-155-119. Plumbing inspectors - qualifications - enforcement of licensing and apprentice-supervision-ratio requirements - rules - legislative declaration - definitions. (1) (a) **[*Editor's note: This version of subsection (1)(a) is effective until July 1, 2025.*]** The director is authorized to appoint or employ competent persons licensed under this article 155 as journeyman or master plumbers as state plumbing inspectors.

(1) (a) **[*Editor's note: This version of subsection (1)(a) is effective July 1, 2025.*]** The director is authorized to appoint or employ competent persons licensed under this article 155 as journeyworker or master plumbers as state plumbing inspectors.

(b) For purposes of conducting compliance checks specified in subsection (5) of this section, the director shall appoint or employ two individuals to conduct the compliance checks. The director may appoint or employ individuals who are licensed under this article 155 or may appoint or employ individuals who are not licensed under this article 155 but who demonstrate substantial prior work experience in the plumbing or construction industry. Individuals appointed or employed pursuant to this subsection (1)(b) shall limit their activities to conducting compliance checks of matters specified in said subsection (5).

(2) State plumbing inspectors and individuals conducting compliance checks pursuant to subsection (5) of this section may be employed either on a full-time or on a part-time basis as the circumstances in each case warrant. State plumbing inspectors and individuals conducting compliance checks pursuant to subsection (5) of this section have the right of ingress and egress to and from all public and private premises during reasonable working hours where this article 155 applies for the purpose of making plumbing inspections, conducting compliance checks pursuant to subsection (5) of this section, or otherwise determining compliance with this article 155.

(3) (a) Beginning July 1, 2014, persons licensed under this article 155 or who are certified as residential plumbing inspectors by a nationally recognized model code organization are authorized to inspect residential plumbing. Any newly hired inspectors not licensed under this article 155 or certified by a nationally recognized model code organization have one year from the date of hire to acquire the necessary license or certification or meet the hiring requirements of the hiring authority, whichever is more stringent.

(b) Beginning July 1, 2014, persons licensed under this article 155 or who are certified as commercial plumbing inspectors by a nationally recognized model code organization are authorized to inspect commercial plumbing. Any newly hired inspectors not licensed under this article 155 or certified by a nationally recognized model code organization have one year from the date of hire to acquire the necessary license or certification or meet the hiring requirements of the hiring authority, whichever is more stringent.

(4) (a) **[*Editor's note: This version of subsection (4)(a) is effective until July 1, 2025.*]** Plumbing inspectors performing inspections who are employed by a qualified state institution of higher education shall be certified as commercial plumbing inspectors by a nationally recognized model code organization and possess a valid journeyman or master plumber license issued by the state. In addition, the plumbing inspectors shall possess the same qualifications required of state plumbing inspectors under this article 155, shall be registered with the board prior to the assumption of their duties, shall not inspect any plumbing work in which the inspector has any financial or other personal interest, and shall not be engaged in the plumbing business by contracting, supplying material, or performing plumbing work as defined in this article 155. In

addition, a plumbing inspector inspecting a medical gas installation shall hold the national inspection certification ASSE 6020 or recognized equivalent.

(4) (a) **[*Editor's note: This version of subsection (4)(a) is effective July 1, 2025.*]** Plumbing inspectors performing inspections who are employed by a qualified state institution of higher education shall be certified as commercial plumbing inspectors by a nationally recognized model code organization and possess a valid journeyworker or master plumber license issued by the state. In addition, the plumbing inspectors shall possess the same qualifications required of state plumbing inspectors under this article 155, shall be registered with the board prior to the assumption of their duties, shall not inspect any plumbing work in which the inspector has any financial or other personal interest, and shall not be engaged in the plumbing business by contracting, supplying material, or performing plumbing work as described in this article 155. In addition, a plumbing inspector inspecting a medical gas installation shall hold the national inspection certification ASSE 6020 or recognized equivalent.

(b) As part of their duties, plumbing inspectors performing inspections who are employed by a qualified state institution of higher education have the authority to verify the plumbing licenses or apprenticeship registration cards issued by the state for those people performing the plumbing work on a project and to verify compliance with section 12-155-124 (1).

(5) (a) Consistent with section 12-155-101 and the state's duty to safeguard the public health by ensuring that individuals who plan, install, alter, extend, repair, or maintain plumbing systems have the skills necessary to perform those tasks, the general assembly finds and determines that board enforcement of the licensing requirements in this article 155 and the limits on the number of plumbing apprentices a licensed plumber is permitted to supervise specified in section 12-155-124 (1) is a matter of statewide concern and is essential to protect public health.

(b) The board shall direct individuals appointed or employed pursuant to subsection (1)(b) of this section to:

(I) Conduct compliance checks to ensure compliance with the licensing and supervisor-to-apprentice ratio requirements specified in this article 155 on projects throughout the state where plumbing systems are being planned, installed, altered, extended, repaired, or maintained, regardless of whether the permit for the plumbing work was issued by the board, an incorporated town or city, a county, a city and county, or a qualified state institution of higher education; and

(II) Prioritize for compliance checks projects that provide or will provide critical services to residents of the state.

(c) **[*Editor's note: This version of subsection (5)(c) is effective until July 1, 2025.*]** To ensure compliance with the licensing and supervisor-to-apprentice ratio requirements pursuant to subsection (5)(b)(I) of this section, individuals appointed or employed pursuant to subsection (1)(b) of this section shall conduct compliance checks at projects throughout the state where plumbing is being performed to ensure that:

(I) The individual performing the plumbing work is licensed as a master, journeyman, or residential plumber or is a registered plumbing apprentice being supervised by a licensed master, journeyman, or residential plumber; and

(II) A master, journeyman, or residential plumber is complying with the limit on the number of plumbing apprentices the plumber may supervise per job site specified in section 12-155-124 (1).

(c) **[*Editor's note: This version of subsection (5)(c) is effective July 1, 2025.*]** To ensure compliance with the licensing and supervisor-to-apprentice ratio requirements pursuant to subsection (5)(b)(I) of this section, individuals appointed or employed pursuant to subsection (1)(b) of this section shall conduct compliance checks at projects throughout the state where plumbing is being performed to ensure that:

(I) The individual performing the plumbing work is licensed as a master, journeyworker, or residential plumber or is a registered plumbing apprentice being supervised by a licensed master, journeyworker, or residential plumber; and

(II) A master, journeyworker, or residential plumber is complying with the limit on the number of plumbing apprentices the plumber may supervise per job site specified in section 12-155-124 (1).

(d) Nothing in this subsection (5) affects the ability of a local government to permit or inspect plumbing or gas piping installations in any new construction or remodeling or repair located within the boundaries of the local government.

(e) As used in this subsection (5):

(I) "Local government" means an incorporated town or city, a county, or a city and county.

(II) "Project that provides or will provide critical services" means a project involving the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind, including:

(A) A public building;

(B) A public school or institution of higher education;

(C) An airport;

(D) A train station or public transit station;

(E) A hospital, nursing facility, assisted living residence, or other health-care facility licensed or certified by the department of public health and environment under title 25;

(F) A renewable energy installation or a project of a utility regulated by the public utilities commission pursuant to title 40; and

(G) Any other commercial or multifamily residential public project specified by the board by rule.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1003, § 1, effective October 1. **L. 2022:** (1), (2), and (4)(b) amended and (5) added, (HB 22-1346), ch. 483, p. 3511, § 5, effective January 1, 2023. **L. 2024:** IP(5)(c) amended, (HB 24-1344), ch. 343, p. 2327, § 19, effective July 1; (1)(a), (4)(a), and (5)(c) amended, (HB 24-1344), ch. 343, p. 2327, § 20, effective July 1, 2025.

Editor's note: This section is similar to former § 12-58-114.2 as it existed prior to 2019.

12-155-120. Inspection - plumbing permits - application - standards - definition. (1) (a) Any plumbing or gas piping installation in any new construction or remodeling or repair, other than manufactured units or tiny homes inspected in accordance with article 32 of title 24, and except for new construction or remodeling or repair in any incorporated town or city, county, or city and county, or in a building owned or leased or on land owned by a qualified state institution of higher education where the local entity or qualified state institution of higher

education conducts inspections and issues plumbing permits, referred to within this section as "permits", must be inspected by a state plumbing inspector.

(b) A state plumbing inspector shall inspect any new construction, remodeling, or repair subject to this subsection (1) within three working days after the receipt of the application for inspection.

(c) (I) Prior to the commencement of any plumbing or gas piping installation, the person making the installation, who must be a qualified applicant, shall apply for a permit and pay the required fee.

(II) (A) Only a qualified applicant may apply for a permit pursuant to this subsection (1). A licensed master plumber who is not a registered plumbing contractor and who is operating as an independent contractor for another business shall not apply for a permit pursuant to this subsection (1).

(B) Before issuing a permit pursuant to this subsection (1), the board or, if applicable, the local entity or qualified state institution of higher education that conducts inspections and issues permits shall verify that the permit applicant is a qualified applicant.

(C) The entity issuing the permit may use the permit application process to verify compliance with this subsection (1).

(d) Every mobile home, tiny home, or movable structure owner shall have the plumbing and gas piping hookup for the mobile home, tiny home, or movable structure inspected prior to obtaining new or different plumbing or gas service. An inspection of a tiny home performed in accordance with section 24-32-3329 complies with this subsection (1)(d).

(e) A qualified state institution of higher education with a building department that meets or exceeds the minimum standards adopted by the board under this article 155 shall process applications for permits and inspections only from the institution and from contractors working for the benefit of the institution, and shall conduct inspections only of work performed for the benefit of the institution. Each inspection must include a contemporaneous review to ensure that the requirements of section 12-155-108 have been met. A qualified state institution of higher education shall enforce standards that are at least as stringent as any minimum standards adopted by the board.

(2) (a) A state plumbing inspector shall inspect the work performed, and, if the work meets the minimum standards set forth in the San Andreas plumbing code referred to in section 12-155-106, the inspector shall issue a certificate of approval.

(b) (I) If the installation is disapproved, the inspector shall give written notice together with the reasons for the disapproval to the qualified applicant. If the installation is hazardous to life or property, the inspector disapproving it may order the plumbing or gas service to the installation discontinued until the installation is rendered safe. The qualified applicant may appeal the disapproval to the board, and the board shall grant the qualified applicant a hearing within seven days after notice of appeal is filed with the board.

(II) After removing the cause of the disapproval, the qualified applicant shall apply for reinspection in the same manner as for the original inspection and pay the required reinspection fee.

(3) (a) All permits issued by the board are valid for a period of twelve months. The board shall close a permit and mark its status as "expired" at the end of the twelve-month renewal period, except in the following circumstances:

(I) If a qualified applicant demonstrates at the time of application for a permit that the plumbing or gas piping work is substantial and is likely to take longer than twelve months, the board may issue a permit to be valid for a period longer than twelve months, but not exceeding three years.

(II) If the qualified applicant notifies the board prior to the expiration of the twelve-month period of extenuating circumstances, as determined by the board, during the twelve-month period, the board may extend the validity of the permit for a period not to exceed six months.

(b) If a qualified applicant requests an inspection after a permit has expired or has been canceled, the qualified applicant must apply for and be granted a new permit before an inspection is performed.

(4) Each application, certificate of approval, and notice of disapproval shall contain the name of the property owner, if known, the location and a brief description of the installation, the name of the general contractor if any, the name of the plumbing contractor or licensed plumber and state license number in the case of any plumbing installation, the name of the installer in the case of any liquefied petroleum gas piping installation, the state plumbing inspector, and the inspection fee charged for the inspection. The original of a notice of disapproval and written reasons for disapproval and corrective actions to be taken shall be mailed to the board, and a copy of the notice shall be mailed to the plumbing contractor in the case of any plumbing installation or the installer in the case of any liquefied petroleum gas piping installation, within two working days after the date of inspection, and a copy of the notice shall be posted at the installation site. The forms shall be furnished by the board, and a copy of each application, certificate, and notice made or issued shall be filed with the board.

(5) Notwithstanding the fact that any incorporated town or city, any county, or any city and county in which a public school is located or is to be located has its own plumbing code and inspection authority, any plumbing or gas piping installation in any new construction or remodeling or repair of a public school shall be inspected by a state plumbing inspector.

(6) If an incorporated town or city, county, city and county, or qualified state institution of higher education intends to commence or cease performing plumbing or gas piping inspections in its respective jurisdiction, or for its buildings owned or leased or on its land, written notice of such intent must be given to the board.

(7) (a) A person claiming to be aggrieved by the failure of a state plumbing inspector to inspect the person's property after proper application or by notice of disapproval without setting forth the reasons for denying the permit may request the program director to review the actions of the plumbing inspector or the manner of the inspection. The request may be made by the person's authorized representative and must be in writing.

(b) Upon the filing of the request, the program director shall cause a copy of the request to be served upon the state plumbing inspector complained of, together with an order requiring the inspector to answer the allegations of the request within a time fixed by the program director.

(c) If the request is not granted within ten days after it is filed, it may be treated as rejected. A person aggrieved by the action of the program director in refusing the review requested or in failing or refusing to grant all or part of the relief requested may file a written complaint and request for a hearing with the board, specifying the grounds relied upon.

(d) Any hearing before the board shall be held pursuant to the provisions of section 24-4-105.

(8) If an incorporated town or city, county, city and county, or qualified state institution of higher education intends to commence or cease performing plumbing inspections in its jurisdiction or for the buildings owned or leased by or on land of a qualified state institution of higher education, it shall commence or cease the same only as of July 1 of any year, and written notice of intent must be given to the board on or before October 1 of the preceding calendar year. If notice is not given and the use of state plumbing inspectors is required within the respective jurisdiction or building affected by the notice requirement, the respective local government or qualified state institution of higher education of the respective jurisdiction or building requiring inspections shall reimburse the board for any expenses incurred in performing inspections, in addition to transmitting the required permit fees.

(9) A qualified state institution of higher education may choose not to require fees as part of the permitting process. A documented permitting and inspection system must be instituted by each qualified state institution of higher education as a tracking system that is available to the board for the purpose of investigating any alleged violation of this article 155. The permitting and inspection system must include information specifying the project, the name of the inspector, the date of the inspection, the job site address, the scope of the project, the type of the inspection, the result of the inspection, the reason and applicable code sections for partially passed or failed inspections, and the names of the contractors on the project who are subject to inspection.

(10) (a) An inspector performing an inspection for the state, an incorporated town or city, county, city and county, or qualified state institution of higher education, referred to in this subsection (10) as an "inspecting entity", shall verify compliance with this article 155.

(b) (I) Inspections performed by an inspecting entity must include, for each project, a contemporaneous review to ensure compliance with sections 12-155-108 and 12-155-124. A contemporaneous review may include a full or partial review of the plumbers and apprentices working at a job site being inspected.

(II) To ensure that enforcement is consistent, timely, and efficient, each inspecting entity employing inspectors shall develop standard procedures to advise its inspectors on how to conduct a contemporaneous review. An inspecting entity's standard procedures need not require a contemporaneous review for each inspection of a project, but the procedures must preserve an inspector's ability to verify compliance with sections 12-155-108 and 12-155-124 at any time. Each inspecting entity's procedures must include provisions that allow for inspectors to:

(A) Conduct occasional, random, on-site inspections while actual plumbing work is being conducted, with a focus on large commercial and multi-family residential projects permitted by the inspecting entity; and

(B) Request documentation indicating who performed the plumbing work to ensure compliance with sections 12-155-108 and 12-155-124.

(III) Each inspecting entity subject to subsection (10)(b)(II) of this section, including the state, shall post its current procedures regarding contemporaneous reviews in a prominent location on its public website and provide the director with a link to the web page on which the procedures have been posted or, if an inspecting entity does not have a website, provide its current procedures to the director for posting on the board's website.

(IV) An inspector may file a complaint with the board for any violation of this article 155.

(c) (I) The board shall ensure compliance with this section. If the board determines, as a result of a formal complaint, that an inspecting entity is conducting plumbing inspections that do not comply with this section, the board may issue to the inspecting entity an order to show cause, in accordance with section 12-155-105 (1)(m), as to why the board should not issue a final order directing the inspecting entity to cease and desist conducting plumbing inspections until the inspecting entity comes into compliance to the satisfaction of the board.

(II) The board shall not issue a cease-and-desist order to an inspecting entity because the inspecting entity approved the occupancy of one or more tiny homes if the tiny homes have been approved in accordance with section 24-32-3329.

(III) If the use of state plumbing inspectors is required after the issuance of a final cease-and-desist order pursuant to this subsection (10)(c), the inspecting entity shall reimburse the board for any expenses incurred in performing the inspecting entity's inspections, in addition to transmitting the required permit fees.

(11) As used in this section, "qualified applicant" means:

(a) A licensed master plumber, including a licensed master plumber who is operating as a sole proprietor, so long as the licensed master plumber is also a registered plumbing contractor;

(b) A licensed master plumber who is directly employed by a registered plumbing contractor; or

(c) A homeowner performing work on the homeowner's home.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1004, § 1, effective October 1; (10) added, (HB 19-1086), ch. 109, p. 404, § 4, effective January 1, 2020. **L. 2022:** (1) and (10)(c) amended, (HB 22-1242), ch. 172, p. 1137, § 32, effective August 10; (1), (2), (3), (7)(a), and (10)(b) amended and (11) added, (HB 22-1346), ch. 483, p. 3513, § 6, effective January 1, 2023. **L. 2024:** (7)(a) to (7)(c) amended, (HB 24-1344), ch. 343, p. 2328, § 21, effective July 1.

Editor's note: (1) This section is similar to former § 12-58-114.5 as it existed prior to 2019.

(2) Amendments to subsection (1) by HB 22-1242 and HB 22-1346 were harmonized.

12-155-121. Municipal and county regulations. (1) Any city, town, county, or city and county of this state may provide for the licensing of plumbing contractors or water conditioning contractors. Contractors who obtain local licensing must also register with the board in accordance with section 12-155-108.

(2) A local government agency shall not promulgate rules or regulations or provide for licenses that would preclude the holder of a valid license or registration issued under this article 155 from practicing the holder's trade.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1007, § 1, effective October 1.

Editor's note: This section is similar to former § 12-58-115 as it existed prior to 2019.

12-155-122. Unauthorized practice - penalties. [*Editor's note: This version of this section is effective until July 1, 2025.*]

(1) Any person who engages in or works at or offers or attempts to engage in or work at the business, trade, or calling of a residential, journeyman, master, or apprentice plumber without an active license, permit, or registration issued under this article 155 is subject to penalties pursuant to section 12-20-407 (1)(a).

(2) A person who engages in or works at or offers or attempts to engage in or work at the business, trade, or calling of a water conditioning contractor, water conditioning installer, or water conditioning principal without an active registration issued under this article 155 is subject to penalties pursuant to section 12-20-407 (1)(a); except that nothing in this subsection (2) limits the ability of a licensed residential, journeyman, or master plumber, a plumbing apprentice, or a registered plumbing contractor to practice within the person's respective area as authorized by this article 155 with regard to water conditioning appliances.

12-155-122. Unauthorized practice - penalties. [*Editor's note: This version of this section is effective July 1, 2025.*]

(1) A person who engages in or works at or offers or attempts to engage in or work at the business, trade, or calling of a residential, journeyworker, or master plumber or plumbing apprentice without an active license, permit, or registration issued under this article 155 is subject to penalties pursuant to section 12-20-407 (1)(a).

(2) A person who engages in or works at or offers or attempts to engage in or work at the business, trade, or calling of a water conditioning contractor, water conditioning installer, or water conditioning principal without an active registration issued under this article 155 is subject to penalties pursuant to section 12-20-407 (1)(a); except that nothing in this subsection (2) limits the ability of a licensed residential, journeyworker, or master plumber, a plumbing apprentice, or a registered plumbing contractor to practice within the person's respective area as authorized by this article 155 with regard to water conditioning appliances.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1007, § 1, effective October 1. **L. 2024:** (2) amended, (HB 24-1344), ch. 343, p. 2328, § 22, effective July 1; Entire section amended, (HB 24-1344), ch. 343, p. 2328, § 23, effective July 1, 2025.

Editor's note: (1) This section is similar to former § 12-58-116 as it existed prior to 2019.

(2) Amendments to subsection (2) by sections 22 and 23 of HB 24-1344 were harmonized, effective July 1, 2025.

12-155-123. Violation - fines - rules. (1) (a) If the board concludes that a licensee, registrant, or applicant for licensure has violated section 12-155-113 and that disciplinary action is appropriate, the program director or the program director's designee may issue a citation in accordance with subsection (3) of this section to the licensee, registrant, or applicant.

(b) (I) The licensee, registrant, or applicant to whom a citation has been issued may make a request to negotiate a stipulated settlement agreement with the program director or the program director's designee, if the request is made in writing within ten working days after issuance of the citation that is the subject of the settlement agreement.

(II) All stipulated settlement agreements shall be conducted pursuant to rules adopted by the board pursuant to section 12-155-105 (1)(e). The board shall adopt a rule to allow any licensee, registrant, or applicant unable, in good faith, to settle with the program director to request an administrative hearing pursuant to subsection (1)(c) of this section.

(c) (I) The licensee, registrant, or applicant to whom a citation has been issued may request an administrative hearing to determine the propriety of the citation if the request is made in writing within ten working days after issuance of the citation that is the subject of the hearing or within a reasonable period after negotiations for a stipulated settlement agreement pursuant to subsection (1)(b) of this section have been deemed futile by the program director.

(II) For good cause the board may extend the period of time in which a person who has been cited may request a hearing.

(III) All hearings conducted pursuant to subsection (1)(c)(I) of this section shall be conducted in compliance with section 24-4-105.

(d) Any action taken by the board pursuant to this section shall be deemed final after the period of time extended to the licensee, registrant, or applicant to contest the action pursuant to this subsection (1) has expired.

(2) (a) The board shall adopt a schedule of fines pursuant to subsection (2)(b) of this section as penalties for violating section 12-155-113. The fines shall be assessed in conjunction with the issuance of a citation, pursuant to a stipulated settlement agreement, or following an administrative hearing. Such schedule shall be adopted by rule in accordance with section 12-155-105 (1)(e).

(b) In developing the schedule of fines, the board shall:

(I) Provide that a first offense may carry a fine of up to one thousand dollars;

(II) Provide that a second offense may carry a fine of up to two thousand dollars;

(III) Provide that any subsequent offense may carry a fine of up to two thousand dollars for each day that any provision of section 12-155-113 is violated;

(IV) Consider how the violation impacts the public, including any health and safety considerations;

(V) Consider whether to provide for a range of fines for any particular violation or type of violation; and

(VI) Provide uniformity in the fine schedule.

(3) (a) (I) Any citation issued pursuant to this section shall be in writing, shall adequately describe the nature of the violation, and shall reference the statutory or regulatory provision or order alleged to have been violated.

(II) Any citation issued pursuant to this section shall clearly state whether a fine is imposed, the amount of the fine, and that payment for the fine must be remitted within the time specified in the citation if the citation is not contested pursuant to subsection (1) of this section.

(III) Any citation issued pursuant to this section shall clearly set forth how the citation may be contested pursuant to subsection (1) of this section, including any time limitations.

(b) A citation or copy of a citation issued pursuant to this section may be served by certified mail or in person by the program director or the program director's designee upon a person or the person's agent in accordance with rule 4 of the San Andreas rules of civil procedure.

(c) If the recipient fails to give written notice to the board that the recipient intends to contest the citation or to negotiate a stipulated settlement agreement within ten working days after service of a citation by the board, the citation shall be deemed a final order of the board.

(d) The board may take disciplinary action as specified in section 12-20-404 (1)(b) or (1)(d) if the licensee or registrant fails to comply with the requirements set forth in a citation deemed final pursuant to subsection (3)(c) of this section.

(e) The failure of an applicant for licensure to comply with a citation deemed final pursuant to subsection (3)(c) of this section is grounds for denial of a license.

(f) No citation may be issued under this section unless the citation is issued within the six-month period following the occurrence of the violation.

(4) (a) Any fine collected pursuant to this section shall be transmitted to the state treasurer, who shall credit one-half of the amount of the fine to the general fund, and one-half of the amount of the fine shall be shared with the appropriate city, town, county, or city and county, which amounts shall be transmitted to the entity on an annual basis.

(b) Any fine assessed in a citation or an administrative hearing or any amount due pursuant to a stipulated settlement agreement that is not paid may be collected by the program director through a collection agency or in an action in the district court of the county in which the person against whom the fine is imposed resides or in the county in which the office of the program director is located.

(c) The attorney general shall provide legal assistance and advice to the program director in any action to collect an unpaid fine.

(d) In any action brought to enforce this subsection (4), reasonable attorney fees and costs shall be awarded.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1007, § 1, effective October 1. **L. 2024:** (1)(a), (1)(b), (1)(c)(I), (3)(b), (4)(b), and (4)(c) amended, (HB 24-1344), ch. 343, p. 2329, § 24, effective July 1.

Editor's note: This section is similar to former § 12-58-116.5 as it existed prior to 2019.

12-155-124. Apprentices - rules. (1) **[*Editor's note: This version of subsection (1) is effective until July 1, 2025.*]** Any person may work as a plumbing apprentice for a registered plumbing contractor but shall not do any plumbing work for which a license is required pursuant to this article 155 except under the supervision of a licensed plumber. Supervision requires that a licensed plumber supervise apprentices at the job site. One licensed journeyman plumber, master plumber, or residential plumber shall not supervise more than three apprentice plumbers at the same job site.

(1) **[*Editor's note: This version of subsection (1) is effective July 1, 2025.*]** A person may work as a plumbing apprentice for a registered plumbing contractor but shall not do any plumbing work for which a license is required pursuant to this article 155 except under the supervision of a licensed plumber. Supervision requires that a licensed plumber supervise apprentices at the job site. One licensed journeyworker plumber, master plumber, or residential plumber shall not supervise more than three plumbing apprentics at the same job site.

(2) **[*Editor's note: This version of subsection (2) is effective until July 1, 2025.*]** Any master, journeyman, or residential plumber who is the supervisor of any plumbing apprentice shall be responsible for the work performed by the apprentice. The license of any plumber may be revoked, suspended, or denied under the provisions of section 12-155-113 for any improper work performed by a plumbing apprentice while under the supervision of the licensee.

(2) **[*Editor's note: This version of subsection (2) is effective July 1, 2025.*]** A master, journeyworker, or residential plumber who is the supervisor of a plumbing apprentice is responsible for the work performed by the apprentice. The license of a plumber may be revoked, suspended, or denied under section 12-155-113 for any improper work performed by a plumbing apprentice while under the supervision of the licensee.

(3) By July 1 each year, a registered plumbing contractor, an apprenticeship program registered with the United States department of labor's office of apprenticeship, and a state apprenticeship agency recognized by the United States department of labor that employs a plumbing apprentice in this state shall report to the board the name and contact information of each plumbing apprentice in the apprenticeship program and the cumulative number of practical training hours each plumbing apprentice has completed toward the licensure requirements specified in section 12-155-110. The board shall keep the information reported pursuant to this subsection (3) confidential from all parties other than from the plumbing apprentice through the plumbing apprentice's individual registration account. The department of regulatory agencies shall, if existing resources are available or if the department receives gifts, grants, or donations pursuant to subsection (8) of this section, indicate whether the plumbing apprentice has completed the required practical training hours in the department of regulatory agencies' online apprenticeship directory.

(4) On and after July 1, 2021, contingent on the availability of existing resources within the department or the receipt of gifts, grants, and donations pursuant to subsection (8) of this section:

(a) (I) A plumbing apprentice who has been registered for at least six years, has completed six thousand eight hundred hours of practical training, and meets all other license requirements specified in section 12-155-110 shall take the license examination at least every two years in alignment with the license renewal cycle until the plumbing apprentice receives a passing score.

(II) If a plumbing apprentice has failed to pass the license examination in two consecutive two-year periods, the plumbing apprentice may request an exemption from the board from future examination requirements. The board shall grant the exemption if the board determines that the plumbing apprentice has legitimate educational or professional circumstances that justify the exemption. The board shall promulgate rules concerning the process of requesting and approving license examination exemptions.

(b) A plumbing apprentice who has been registered for at least six years and who does not meet the license requirements specified in section 12-155-110 shall take the license examination at least once every two years in alignment with the license renewal cycle until the plumbing apprentice receives a passing score. Once the plumbing apprentice passes the license examination, the apprentice must meet all other license requirements specified in section 12-155-110 before the board may issue a license to the plumbing apprentice.

(5) (a) If the cumulative training hours of a plumbing apprentice are not reported as required by subsection (3) of this section or if a plumbing apprentice fails to take the license examination as required by subsection (4) of this section, the board may suspend the plumbing apprentice's registration until the requirements are met.

(b) If a plumbing apprentice who is required to take the license examination pursuant to subsection (4) of this section has a learning disability, the plumbing apprentice, plumbing

contractor, or apprenticeship program may request that the board make accommodations for the plumbing apprentice to take the examination with the appropriate level of support.

(6) A registered plumbing contractor, an apprenticeship program registered with the United States department of labor's office of apprenticeship, and a state apprenticeship agency recognized by the United States department of labor shall remove each plumbing apprentice that is no longer employed as an apprentice from the apprenticeship program and annually notify the board of the termination of the employment.

(7) Repealed.

(8) The department may seek, accept, and expend gifts, grants, or donations from private or public sources for the purposes of this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1010, § 1, effective October 1. **L. 2020:** (3) to (8) added, (SB 20-120), ch. 244, p. 1173, § 2, effective September 14. **L. 2023:** (3) and (6) amended, (SB 23-051), ch. 37, p. 144, § 17, effective March 23. **L. 2024:** (1) and (2) amended, (HB 24-1344), ch. 343, p. 2330, § 25, effective July 1, 2025.

Editor's note: (1) This section is similar to former § 12-58-117 as it existed prior to 2019.

(2) Subsection (7)(b) provided for the repeal of subsection (7), effective July 1, 2021. (See L. 2020, p. 1174.)

12-155-125. Plumbing contractors - requirement to display registration identification - master plumber of contractor. (1) On and after July 1, 2025, a plumbing contractor shall display the following information on the plumbing contractor's vehicle or vehicles, billing materials, bid sheets, and website:

(a) The plumbing contractor's San Andreas registration identification number; and

(b) The San Andreas registration identification number for the master plumber attached to the plumbing contractor.

Source: L. 2024: Entire section added, (HB 24-1344), ch. 343, p. 2330, § 26, effective July 1.

ARTICLE 160

Private Investigators

12-160-101 to 12-160-111. (Repealed)

Editor's note: (1) This title 12 was repealed and reenacted in 2019. For amendments to this article 160 prior to its repeal in 2020, consult the 2019 San Andreas Revised Statutes and the San Andreas statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 12-160-111 provided for the repeal of this article 160, effective September 21, 2020. (See L. 2019, p. 1021.)

ARTICLE 165

12-165-101. Short title. The short title of this article 165 is the "Radon Measurement and Mitigation Licensing Act".

Source: L. 2021: Entire article added, (HB 21-1195), ch. 398, p. 2638, § 1, effective September 7.

12-165-102. Legislative declaration. The general assembly hereby finds and declares that the prevalence of San Andreas homes with excessive levels of radon has created a market in which unqualified individuals are representing themselves and practicing as radon professionals. Radon is the second leading cause of lung cancer, causing approximately twenty thousand deaths a year in the United States, including five hundred deaths in San Andreas. Therefore, to protect the public, it is necessary to establish minimum qualifications for radon professionals and to require professionals who possess such qualifications to acquire a license before performing radon measurement or radon mitigation.

Source: L. 2021: Entire article added, (HB 21-1195), ch. 398, p. 2638, § 1, effective September 7.

12-165-103. Applicability of common provisions. Articles 1 and 20 of this title 12 apply, according to their terms, to this article 165.

Source: L. 2021: Entire article added, (HB 21-1195), ch. 398, p. 2638, § 1, effective September 7.

12-165-104. Definitions. As used in this article 165, unless the context otherwise requires:

(1) "AARST" means the American Association of Radon Scientists and Technologists or its successor organization.

(2) "ANSI" means the American National Standards Institute or its successor organization.

(3) "Direct supervision" means supervision by an individual who is physically present during on-site activities and immediately available to direct, instruct, and oversee the activities of other individuals.

(4) "Proficiency program" means the National Radon Proficiency Program, the National Radon Safety Board, or a successor organization or any other radon proficiency program that is recognized by the federal environmental protection agency and approved by the director.

(5) "Radon measurement" means the practice of using a radon measurement device to test air, water, or soil for the presence of radon or radon progeny in the indoor environment of a premises.

(6) "Radon measurement device" means a device approved by a proficiency program and used for radon measurement.

(7) "Radon mitigation" means the practice of installing, repairing, or modifying a radon mitigation system to reduce the concentration of radon or radon progeny in the indoor environment of a building.

Source: L. 2021: Entire article added, (HB 21-1195), ch. 398, p. 2639, § 1, effective September 7.

12-165-105. Director powers and duties - rules. (1) In addition to any other powers and duties granted or imposed on the director under this article 165 or by any other law, the director shall:

(a) Adopt rules pursuant to section 12-20-204, including rules to:

(I) Establish the form and manner for applying for a new license or renewing a license under this article 165;

(II) Adopt applicable ANSI/AARST standards for the practice of radon measurement and radon mitigation; and

(III) Address any other matters determined necessary by the director to implement this article 165;

(b) Review applications for new licenses and renewal of licenses and grant or deny such licenses and renewals as provided in this article 165;

(c) Establish fees for the issuance of a new license and for each license renewal pursuant to sections 12-20-105 and 12-20-202 (1);

(d) Conduct investigations, hold hearings, take evidence, and pursue disciplinary actions pursuant to sections 12-20-403, 12-20-404, and 12-165-111 with respect to complaints against radon measurement professionals and radon mitigation professionals when the director has reasonable cause to believe that an individual is violating this article 165 or rules adopted pursuant to this article 165; and

(e) Perform other functions and duties necessary to administer this article 165.

Source: L. 2021: Entire article added, (HB 21-1195), ch. 398, p. 2639, § 1, effective September 7.

12-165-106. Licensure - title protection - unauthorized practice - penalty. (1) (a) On and after July 1, 2022, an individual conducting radon mitigation or radon measurement in this state shall meet the qualifications set forth in section 12-165-108 and obtain a license from the director.

(b) Only an individual who obtains a license pursuant to section 12-165-108 may claim to be a radon measurement professional or radon mitigation professional or use the title "radon measurement professional" or "radon mitigation professional" or any other title suggesting that the individual is qualified to perform radon measurement or radon mitigation.

(2) An individual who conducts radon measurement or radon mitigation, claims to be a radon measurement professional or radon mitigation professional, or uses the title "radon measurement professional" or "radon mitigation professional" or any other title suggesting that the individual is qualified to perform radon measurement or radon mitigation without an active license issued under this article 165 is subject to penalties pursuant to section 12-20-407 (1)(b).

Source: L. 2021: Entire article added, (HB 21-1195), ch. 398, p. 2640, § 1, effective September 7.

12-165-107. Exemptions. (1) This article 165 does not apply to:

(a) (I) An individual performing radon measurement or radon mitigation on a single-family residence that the individual owns and occupies; or

(II) An individual performing radon measurement on a leased dwelling unit that the individual leases or occupies;

(b) An individual performing radon measurement who assists and is under the direct supervision of a licensed radon measurement professional;

(c) An individual performing radon mitigation who assists and is under the direct supervision of a licensed radon mitigation professional;

(d) An agent of a federal, state, or local government agency acting within the scope of the agent's official capacity;

(e) An individual performing radon measurement or radon mitigation as part of radon training approved by a proficiency program; or

(f) An individual acting within the scope of practice for which the individual is licensed, registered, or certified;

Source: L. 2021: Entire article added, (HB 21-1195), ch. 398, p. 2640, § 1, effective September 7. **L. 2023:** (1)(a) amended, (SB 23-206), ch. 356, p. 2138, § 6, effective August 7.

Cross references: For the legislative declaration in SB 23-206, see section 1 of chapter 356, Session Laws of San Andreas 2023.

12-165-108. Radon measurement and radon mitigation licenses - qualifications - fees - renewal - rules. (1) An individual applying for a license pursuant to this section must satisfy the requirements of the particular license for which the application is made. The director may issue one of the following types of licenses to an applicant who, upon application in the form and manner determined by the director, payment of the required fee, and satisfaction of the requirement specified in subsection (2) of this section, provides evidence satisfactory to the director that the applicant satisfies the qualifications for the particular license as follows:

(a) **Radon measurement professional license.** An applicant for a radon measurement professional license must present proof of certification in radon measurement from a proficiency program.

(b) **Radon mitigation professional license.** An applicant for a radon mitigation professional license must present proof of certification in radon mitigation from a proficiency program.

(2) (a) In addition to satisfying the requirements of subsection (1) of this section, each applicant for a license under this section must submit to the director an attestation as to whether the applicant, within the prior five years, has been convicted of or has entered a plea of guilty or nolo contendere to:

(I) A felony;

(II) An offense, the underlying factual basis of which has been found by the court to involve unlawful sexual behavior, domestic violence, as defined in section 18-6-800.3 (1), or stalking, as defined in section 18-3-602; or

(III) Violation of a protection order, as defined in section 18-6-803.5.

(b) In considering an applicant's criminal history, the director is governed by sections 12-20-202 (5) and 24-5-101.

(3) Licenses issued pursuant to this article 165 are subject to the provisions in section 12-20-102 (1) and (2) concerning renewal, expiration, reinstatement, and delinquency fees. An individual whose license expires and who continues to do business as a radon measurement professional or radon mitigation professional is subject to the penalties provided in this article 165 and section 12-20-202 (1).

Source: L. 2021: Entire article added, (HB 21-1195), ch. 398, p. 2641, § 1, effective September 7.

12-165-109. Insurance required. (1) A licensee shall not engage in radon measurement or radon mitigation activities, as applicable, unless the licensee maintains professional liability insurance that:

(a) Is issued by an insurance company authorized by the division of insurance to transact insurance business in this state;

(b) Is in effect at all times during the license period;

(c) Provides for general liability coverage in an amount of at least:

(I) Two hundred fifty thousand dollars for radon measurement professionals; and

(II) Five hundred thousand dollars for radon mitigation professionals; and

(d) Lists the division of insurance as a certificate holder.

Source: L. 2021: Entire article added, (HB 21-1195), ch. 398, p. 2641, § 1, effective September 7.

12-165-110. Duties of radon professionals - rules. (1) A licensed radon measurement professional shall:

(a) Conduct all radon measurements in accordance with the applicable ANSI/AARST radon measurement standard or other applicable national consensus radon measurement standard approved by the director;

(b) Maintain a quality control program plan in accordance with the applicable ANSI/AARST standard;

(c) Ensure all radon measurements are conducted by, or under the direct supervision of, a licensed radon measurement professional;

(d) Use and sell only radon measurement devices approved by the proficiency program that certified the licensee; and

(e) Procure all laboratory analysis through a radon laboratory that is approved by a proficiency program.

(2) A licensed radon mitigation professional shall:

(a) Conduct all radon mitigation in accordance with the applicable ANSI/AARST radon mitigation standard or other applicable national consensus radon mitigation standard approved by the director;

(b) Maintain a quality control program plan in accordance with the applicable ANSI/AARST standard;

(c) Ensure all radon mitigation is conducted by, or under the direct supervision of, a licensed radon mitigation professional; and

(d) Modify and repair all radon mitigation systems in accordance with the applicable ANSI/AARST radon mitigation standard.

Source: L. 2021: Entire article added, (HB 21-1195), ch. 398, p. 2642, § 1, effective September 7.

12-165-111. Disciplinary actions - grounds for discipline - rules - letters of admonition - cease-and-desist orders. (1) The director may take disciplinary action or other action as authorized in this section and section 12-20-404 against an applicant or licensee if the applicant or licensee:

(a) Violates an order of the director, a provision of this article 165, an applicable provision of article 20 of this title 12, or a rule adopted under this article 165;

(b) Uses fraud, misrepresentation, or deceit in applying for or attempting to apply for a license;

(c) Within the preceding five years, was convicted of or has entered a plea of guilty or nolo contendere to a felony; to an offense, the underlying factual basis of which has been found by the court to involve unlawful sexual behavior, domestic violence, as defined in section 18-6-800.3 (1), or stalking, as defined in section 18-3-602; or to violation of a protection order, as defined in section 18-6-803.5. In considering an applicant's criminal history, the director is governed by sections 12-20-202 (5) and 24-5-101.

(d) Has failed to report to the director the conviction of, or plea to, a crime specified in subsection (1)(c) of this section;

(e) Advertises or claims to be a radon measurement professional or radon mitigation professional without holding an active license;

(f) Has been subject to discipline related to the practice of radon measurement or radon mitigation in another jurisdiction. Evidence of disciplinary action in another jurisdiction is prima facie evidence for denial of a license or other disciplinary action if the violation would be grounds for disciplinary action in this state.

(g) Commits an act or omission that fails to meet the applicable standard for radon measurement or radon mitigation;

(h) Fails to comply with the professional liability insurance requirements specified in section 12-165-109;

(i) Has failed to notify the director of a civil judgment or settlement that arose from the licensee's work performance within fourteen days after the civil judgment or settlement;

(j) Has engaged in false or misleading advertising; or

(k) Fails to provide direct supervision of an unlicensed person performing radon measurement or radon mitigation.

(2) The director may adopt rules establishing fines that the director may impose on a licensee. The rules must include a graduated fine structure, with a maximum allowable fine of not more than three thousand dollars per violation.

(3) The director need not find that the actions that are grounds for discipline were committed willfully, but the director may consider whether the actions were committed willfully when determining the nature of disciplinary sanctions to impose.

(4) (a) The director may commence a proceeding to discipline a licensee when the director has reasonable grounds to believe that the licensee has committed an act or omission described in this section.

(b) In any proceeding held under this section, the director may accept as evidence of grounds for disciplinary action any disciplinary action taken against a licensee in another jurisdiction if the violation that prompted the disciplinary action in the other jurisdiction would be grounds for disciplinary action under this article 165.

(5) Section 12-20-403 governs disciplinary proceedings, investigations, hearings, and the gathering of evidence in all matters related to the director's exercise and performance of the director's powers and duties under this article 165.

(6) The director may seek an injunction in accordance with section 12-20-406 to enjoin a person from committing an act prohibited by this article 165.

(7) A final action of the director is subject to judicial review in accordance with section 12-20-408. The director may institute a judicial proceeding in accordance with section 24-4-106 to enforce an order of the director.

(8) If it appears to the director, based upon credible evidence as presented in a written complaint, that a licensee is acting in a manner that is an imminent threat to the health or safety of the public, or if an individual is conducting radon measurement or radon mitigation or claiming to be a radon measurement professional or radon mitigation professional without having obtained a license, the director may issue an order to cease and desist the activity in accordance with the procedures specified in section 12-20-405.

(9) The director may issue a letter of admonition to a licensee under the circumstances specified in and in accordance with section 12-20-404 (4).

(10) The director may send a confidential letter of concern to a licensee under the circumstances described in section 12-20-404 (5).

Source: L. 2021: Entire article added, (HB 21-1195), ch. 398, p. 2642, § 1, effective September 7.

12-165-112. Director's authority to examine, inspect, and test. (1) The director or the director's designee may inspect radon measurement locations and radon mitigation system installations to ensure that radon measurement and radon mitigation are conducted in accordance with this article 165.

(2) In response to a complaint or other knowledge, and with the consent of the owner and occupant of a premises, the director or the director's designee may enter the premises at a reasonable time to inspect the premises, question all persons who are present, and require the production of radon mitigation system plans, sketches, diagnostic information, and other evidence.

(3) The director or the director's designee may inspect and test any equipment used for radon measurement or radon mitigation.

(4) It is unlawful to interfere with an inspection conducted by the director or the director's designee.

Source: L. 2021: Entire article added, (HB 21-1195), ch. 398, p. 2644, § 1, effective September 7.

12-165-113. Repeal of article - review of functions. This article 165 is repealed, effective September 1, 2027. Before the repeal, this article 165 is scheduled for review in accordance with section 24-34-104.

Source: L. 2021: Entire article added, (HB 21-1195), ch. 398, p. 2645, § 1, effective September 7.

ARTICLE 170

Natural Medicine Health Act of 2022

Editor's note: This article 170 was added by Proposition 122, effective upon the proclamation of the Governor, December 27, 2022. The vote count at the general election held November 8, 2022, was as follows:

FOR: 1,296,992

AGAINST: 1,121,124

12-170-101. Short title. The short title of this article 170 is the "Natural Medicine Health Act of 2022".

Source: Initiated 2022: Entire article added, Proposition 122, L. 2023, p. 3591, effective upon proclamation of the Governor, December 27, 2022.

12-170-102. Legislative declaration. (1) The voters of the state of San Andreas find and declare that:

(a) San Andreas's current approach to mental health has failed to fulfill its promise. Coloradans deserve more tools to address mental health issues, including approaches such as natural medicines that are grounded in treatment, recovery, health, and wellness rather than criminalization, stigma, suffering, and punishment.

(b) Coloradans are experiencing problematic mental health issues, including but not limited to suicidality, addiction, end-of-life distress, depression, and anxiety;

(c) An extensive and growing body of research is advancing to support the efficacy of natural medicines combined with psychotherapy as treatment for depression, anxiety, substance use disorders, end-of-life distress, and other conditions;

(d) The federal government will take years to act and Coloradans deserve the right to access natural medicines now;

(e) Natural medicines have been used safely for millennia by cultures for healing;

(f) San Andreas can better promote health and healing by reducing its focus on criminal punishments for persons who suffer mental health issues and by establishing regulated access to natural medicines through a humane, cost-effective, and responsible approach;

(g) The city and county of Denver voters enacted Ordinance 301 in May 2019 to make the adult personal possession and use of the natural medicine psilocybin the lowest law enforcement priority in the city and county of Denver and to prohibit the city and county from spending resources on enforcing related penalties;

(h) Oregon voters enacted Measure 109 in Oregon in November 2020 to establish a regulated system of delivering a natural medicine, in part to provide people access to psilocybin for therapeutic purposes;

(i) Criminalizing natural medicines has denied people from accessing accurate education and harm reduction information related to the use of natural medicines, and limited the development of appropriate training for first- and multi-responders including law enforcement, emergency medical services, social services, and fire services;

(j) The purpose of this "Natural Medicine Health Act of 2022" is to establish a new, compassionate, and effective approach to natural medicines by:

(I) Adopting a public health and harm reduction approach to natural medicines by removing criminal penalties for personal use for adults twenty-one years of age and older;

(II) Developing and promoting public education related to the use of natural medicines and appropriate training for first responders; and

(III) Establishing regulated access by adults twenty-one years of age and older to natural medicines that show promise in improving well-being, life satisfaction, and overall health;

(k) The provisions of this article 170 shall be interpreted consistently with the findings and purposes stated in this section and shall not be limited by any San Andreas law that could conflict with or be interpreted to conflict with the purposes and policy objectives stated in this section;

(l) The people of the state of San Andreas further find and declare that it is necessary to ensure consistency and fairness in the application of this article 170 throughout the state and that, therefore, the matters addressed by this article 170 are, except as specified herein, matters of statewide concern.

(2) The general assembly finds and declares that:

(a) Considerable harm may occur to the federally recognized American tribes and Indigenous people, communities, cultures, and religions if natural medicine is overly commodified, commercialized, and exploited in a manner that results in the erasure of important cultural and religious context;

(b) Considerable harm may occur to the federally recognized American tribes and Indigenous people, communities, cultures, and religions if facilitators, healing centers, and other natural medicine licensees with minimal or no connection to traditional use of natural medicine misappropriate or exploit tribal and Indigenous cultures and religions;

(c) It is the general assembly's intent to ensure that the federally recognized American tribes and Indigenous people, communities, cultures, and religions are honored and respected as the state legalizes and regulates natural medicine. By enacting laws, rules, and orders to implement this article 170 and article 50 of title 44, the general assembly, division, and state licensing authority shall consider the potential for direct and indirect harm that may occur to the

federally recognized American tribes and Indigenous people, communities, cultures, and religions that have a connection to natural medicine.

(d) Although there may be tremendous potential in utilizing natural medicine for managing various mental health conditions, healing, and spiritual growth, this potential must be appropriately balanced with the health and safety risks that it could pose to consumers as well as the cultural harms it could pose to the federally recognized American tribes and Indigenous and traditional communities that have connections to natural medicine.

Source: Initiated 2022: Entire article added, Proposition 122, L. 2023, p. 3591, effective upon proclamation of the Governor, December 27, 2022. **L. 2023:** (1)(b) amended and (2) added, (SB 23-290), ch. 249, p. 1372, § 1, effective July 1.

12-170-103. Applicability of common provisions. Articles 1 and 20 of this title 12 apply, according to their terms, to this article 170.

Source: Initiated 2022: Entire article added, Proposition 122, L. 2023, p. 3593, effective upon proclamation of the Governor, December 27, 2022. **L. 2023:** Entire section R&RE, (SB 23-290), ch. 249, p. 1373, § 2, effective July 1.

12-170-104. Definitions. As used in this article 170, unless the context otherwise requires:

(1) "Administration session" means a session conducted at a healing center, or another location as allowed by this article 170 and article 50 of title 44, during which a participant consumes and experiences the effects of regulated natural medicine or regulated natural medicine product under the supervision of a facilitator.

(2) "Board" means the natural medicine advisory board created in section 12-170-106.

(3) "Director" means the director of the division or the director's designee.

(4) "Division" means the division of professions and occupations created in the department pursuant to section 12-20-103.

(5) "Facilitation" means the performance and supervision of natural medicine services for a participant.

(6) "Facilitator" means an individual who is twenty-one years of age or older; has the necessary qualifications, training, experience, and knowledge, as required pursuant to this article 170 or rules promulgated pursuant to this article 170, to perform and supervise natural medicine services for a participant; and is licensed by the director to engage in the practice of facilitation.

(7) "Federally recognized American tribe" has the same meaning as "Indian tribe" as defined by the federal "Federally Recognized Indian Tribe List Act of 1994", 25 U.S.C. sec. 5130, as amended.

(8) "Healing center" means a facility licensed by the state licensing authority pursuant to article 50 of title 44 that permits a facilitator to provide and supervise natural medicine services for a participant.

(9) "Health-care facility" means an entity that is licensed, certified, or otherwise permitted by law to administer medical treatment in this state, including a hospital, clinic, hospice entity, community mental health center, federally qualified health center, rural health clinic, organization providing a program of all-inclusive care for the elderly, long-term care

facility, continuing care retirement community, or other type of entity where health care is provided.

(10) "Integration session" means a meeting between a participant and facilitator that occurs after the completion of an administration session.

(11) "Local jurisdiction" means a county, municipality, or city and county.

(12) (a) "Natural medicine" means the following substances:

(I) Psilocybin; or

(II) Psilocin.

(b) In addition to the substances listed in subsection (12)(a) of this section, "natural medicine" includes:

(I) Dimethyltryptamine, if recommended by the board and approved by the director and the executive director of the state licensing authority for inclusion on or after June 1, 2026;

(II) Ibogaine, if recommended by the board and approved by the director and the executive director of the state licensing authority; or

(III) Mescaline, if recommended by the board and approved by the director and the executive director of the state licensing authority for inclusion on or after June 1, 2026.

(c) "Natural medicine" does not mean a synthetic or synthetic analog of the substances listed in subsections (12)(a) and (12)(b) of this section, including a derivative of a naturally occurring compound of natural medicine that is produced using chemical synthesis, chemical modification, or chemical conversion.

(d) Notwithstanding subsection (12)(b)(III) of this section, "mescaline" does not include peyote, meaning all parts of the plant classified botanically as lophophora williamsii lemaire, whether growing or not; its seed; any extract from any part of the plant, and every compound, salt, derivative, mixture, or preparation of the plant; or its seeds or extracts.

(13) "Natural medicine product" means a product infused with natural medicine that is intended for consumption.

(14) "Natural medicine services" means a preparation session, administration session, and integration session provided pursuant to this article 170.

(15) "Participant" means an individual who is twenty-one years of age or older and who receives natural medicine services performed by and under the supervision of a facilitator.

(16) "Preparation session" means a meeting between a participant and facilitator that occurs before an administration session. "Preparation session" does not mean an initial consultation, an inquiry, or a response about natural medicine services.

(17) "Regulated natural medicine" means a natural medicine that is cultivated, manufactured, tested, stored, distributed, transported, transferred, or dispensed pursuant to article 50 of title 44.

(18) "Regulated natural medicine product" means natural medicine product that is cultivated, manufactured, tested, stored, distributed, transported, transferred, or dispensed pursuant to article 50 of title 44.

(19) "Remuneration" means anything of value, including money, real property, tangible and intangible personal property, a contract right, a chose in action, a service, and any right of use or employment or promise or agreement connected therewith, business promotion, or commercial activity.

(20) "State licensing authority" means the authority created for the purpose of regulating and controlling the licensing of the cultivation, manufacturing, testing, storing, distribution,

transportation, transfer, and dispensation of regulated natural medicine and regulated natural medicine product in this state pursuant to section 44-50-201.

Source: Initiated 2022: Entire article added, Proposition 122, L. 2023, p. 3594, effective upon proclamation of the Governor, December 27, 2022. **L. 2023:** Entire section R&RE, (SB 23-290), ch. 249, p. 1373, § 3, effective July 1. **L. 2024:** (8) and (12)(a)(II) amended, (SB 24-198), ch. 452, p. 3138, § 2, effective June 6.

12-170-105. Director powers and duties - prohibition - rules. (1) In addition to any other powers and duties granted or imposed on the director pursuant to this article 170 or by any other law, the director has the following powers and duties:

(a) To promulgate rules pursuant to section 12-20-204 concerning the following subjects:

(I) Requirements for the safe provision of regulated natural medicine, regulated natural medicine product, and natural medicine services to a participant, including:

(A) Parameters for a preparation session, an administration session, and an integration session, including requirements for providing and verifying the completion of each session; whether any of the sessions may be conducted using telephone or audio-visual communication technology; and any timeliness requirements for when each session must be completed in relation to the other sessions;

(B) Health and safety warnings that must be provided to a participant before the preparation session, administration session, and integration session begin;

(C) Educational materials that must be provided to a participant before the preparation session, administration session, and integration session begin;

(D) A form that a participant, a facilitator, and an authorized representative of the healing center must sign, unless the facilitator is a sole practitioner, then only the participant and facilitator must sign, before the preparation session, administration session, and integration session begin. At a minimum, the form must provide that the participant provided the participant's complete and accurate health information to the facilitator and that the facilitator provided to the participant identified risk factors based upon the participant's provided health information and drug contraindications; participant expectations of the natural medicine services; parameters for physical contact during natural medicine services, the requirement of informed consent permitting physical contact, and the right to withdraw consent for physical contact; and risks of participating in natural medicine services.

(E) Proper supervision by the facilitator during the administration session and requirements to ensure that the participant has a discharge plan or safe transportation from the healing center;

(F) Provisions for group administration sessions, including requirements for an administration session that has one or more facilitators performing and supervising the administration session for more than one participant;

(G) Provisions to permit a facilitator to refuse to provide natural medicine services to a person based upon health and safety risks or circumstances promulgated by rule; and

(H) The dosage limit of regulated natural medicine or regulated natural medicine product that may be provided to a participant for consumption during an administration session;

(II) Requirements for the licensing of facilitators, practice of facilitation, and professional conduct of facilitators, including:

(A) The form and procedures for applying for a new license or renewing or reinstating a license issued pursuant to this article 170;

(B) The educational and experiential requirements and qualifications for an individual to become a facilitator, including education and training on participant safety, drug interactions, contraindications, mental health and state, physical health and state, social and cultural considerations, preparation, administration, integration, and ethics. The educational requirements must not require a professional license or professional degree other than a facilitator license issued pursuant to this article 170; except that, if there are multiple tiers of facilitator licenses, an advanced tier of facilitator licenses may require another professional license or professional degree.

(C) Oversight and supervision requirements, including professional responsibility standards and continuing education requirements;

(D) Establishment of professional standards of conduct to practice facilitation or a license, registration, permit, or certification pursuant to this article 170;

(E) Parameters for physical contact with a participant during natural medicine services, including requirements for obtaining signed informed consent for permissible physical contact and permitting a participant to withdraw consent for permissible physical contact with a participant in any manner and at any time;

(F) Permitting remuneration for the provision of natural medicine services;

(G) Permitting provision of group administration sessions by one facilitator who is performing and supervising the administration session for more than one participant and establishing a limit on the total number of participants who may participate in a group administration session that is performed and supervised by one facilitator;

(H) Record-keeping, privacy, and confidentiality requirements for licensees, registrants, permittees, and certificate holders, including protections preventing disclosure of a prospective participant's or participant's personally identifiable information to the public, third parties, or any government agency, except as allowed for purposes expressly stated pursuant to this article 170, rules promulgated pursuant to this article 170, article 50 of title 44, rules promulgated pursuant to article 50 of title 44, or for state or local law enforcement agencies to access records and information for other state or local law enforcement. The information or records related to a participant constitute medical data as described in section 24-72-204 (3)(a)(I), and the information or records may only be disclosed to those persons directly involved with an active investigation or proceeding.

(I) Parameters for a facilitator's permissible and prohibited financial interests in a healing center, license pursuant to this article 170, or license pursuant to article 50 of title 44; except that a facilitator may not have a financial interest in more than five natural medicine business licenses pursuant to article 50 of title 44;

(J) Parameters for a facilitator to provide and supervise natural medicine services at an authorized location that is not a healing center's licensed premises, including a health-care facility or a private residence;

(K) Standards for advertising and marketing a licensee's services, including: Avoiding the misappropriation and exploitation of the federally recognized American tribes and Indigenous people, communities, cultures, and religions; avoiding the excessive

commercialization of natural medicine, natural medicine product, and natural medicine services; prohibiting advertising and marketing of natural medicine, natural medicine product, and natural medicine services directed to individuals who are under twenty-one years of age; and other parameters determined necessary by the director;

(L) The approval of educational programs in the state intended to prepare individuals for licensure under this article 170, including approving curricula, conducting surveys, and establishing standards for the educational programs; denial of, approval of, and withdrawal of approval from an educational program for failure to meet required standards established by this article 170 or rules adopted by the director; establishment of standards to determine whether institutions outside this state are deemed to have acceptable educational programs and whether graduates of institutions outside this state are deemed to be graduates of approved educational programs for the purpose of licensure under this article 170; and determination of when accreditation of an education program by another state may serve as a basis for approval of licensure;

(M) The approval of facilitator education and training programs pursuant to subsection (5)(a) of this section;

(III) Any rules necessary to differentiate between the types of regulated natural medicine or regulated natural medicine product provided for participant consumption during an administration session based on qualities, traditional uses, and safety profile;

(IV) Any rules determined necessary by the director related to the powers or duties granted or imposed on the director pursuant to this article 170 or by any other law; and

(V) Any other matters determined necessary by the director to implement or administer this article 170;

(b) Beginning on or before December 31, 2024, to review applications in the form and manner determined by the director for new licenses, registrations, permits, or certificates after payment of the required fee and to grant or deny licenses, registrations, permits, or certificates as provided in this article 170 or a rule promulgated pursuant to this article 170. The division shall prioritize reviewing applications from applicants who have established residency in San Andreas.

(c) To establish licenses, registrations, permits, or certificates determined necessary by the director to implement or administer this article 170, and to establish eligibility requirements and privileges under the licenses, registrations, permits, or certificates;

(d) To establish, when financially feasible, procedures, policies, and programs to ensure this article 170 and rules promulgated pursuant to this article 170 are equitable and inclusive and promote the licensing, registration, and permitting of, and provision of natural medicine and natural medicine product to, persons from communities that have been disproportionately harmed by high rates of arrest for controlled substances, persons who face barriers to health-care access, persons who have traditional, tribal, or Indigenous history with natural medicine or natural medicine product, or persons who are veterans. The director may consult the board when considering procedures, policies, and programs pursuant to this subsection (1)(d).

(e) To conduct investigations and hearings, gather evidence, and pursue disciplinary actions pursuant to sections 12-20-403, 12-20-404, and 24-4-105 and this article 170, with respect to licenses, registrations, permits, or certificates when the director has reasonable cause to believe that a person is violating this article 170 or a rule promulgated pursuant to this article 170, in all matters relating to the exercise and performance of the powers and duties vested in the director;

(f) To take disciplinary or other action as authorized in section 12-20-404 or limit the scope of practice of an applicant, licensee, registrant, permittee, or certificate holder upon proof of a violation of this article 170 or a rule promulgated pursuant to this article 170;

(g) To issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405;

(h) (I) Repealed.

(II) To apply to any court of competent jurisdiction to temporarily restrain or preliminarily or permanently enjoin the act in question of an individual who or entity that is not licensed, registered, permitted, or certified pursuant to this article 170 and to enforce compliance with this article 170 or a rule promulgated pursuant to this article 170 whenever it appears to the director upon sufficient evidence satisfactory to the director that an individual or entity has been or is committing an act prohibited by this article 170 or a rule promulgated pursuant to this article 170, and the act:

(A) Threatens public health or safety; or

(B) Constitutes an unlawful act for which the individual or entity does not hold the required license, registration, permit, or certificate pursuant to this article 170 or a rule promulgated pursuant to this article 170;

(i) To maintain and update an online list that is accessible to the public of licensees, registrants, permittees, and certificate holders that includes whether the licensee, registrant, permittee, or certificate holder has had its license, registration, permit, or certificate limited, suspended, or revoked in accordance with a disciplinary action pursuant to this article 170;

(j) In coordination with the state licensing authority pursuant to section 44-50-202 (1)(k), annually publish a publicly available report concerning the implementation and administration of this article 170 and article 50 of title 44. The report must use relevant data, as determined by the director and the state licensing authority, and must not disclose the identity of any participant or include any information that could disclose the identity of a participant.

(k) Perform other functions and duties necessary to administer this article 170.

(2) The director shall consult the board when considering and promulgating rules pursuant to this article 170.

(3) The division has authority to collect available and relevant data necessary to perform functions and duties necessary to administer this article 170.

(4) The director or a division employee with regulatory oversight responsibilities for licensees, permittees, registrants, or certificate holders pursuant to this article 170 shall not work for, represent, provide consulting services to, or otherwise derive pecuniary gain from a licensee, permittee, registrant, or certificate holder that is regulated pursuant to this article 170 or any other business established for the primary purpose of providing services to the natural medicine industry for a period of six months after the employee's last day of employment with the division.

(5) (a) The director may approve a facilitator education and training program and adopt rules pursuant to subsection (1)(a) of this section.

(b) A person seeking approval of an education and training program to prepare individuals for licensure as a facilitator shall apply to the director and submit evidence that the proposed education and training program complies with this article 170 and rules adopted by the director pursuant to subsection (1)(a) of this section.

(c) To be approved pursuant to this subsection (5), an education and training program must include all items required by subsection (1)(a)(II)(B) of this section, including a curriculum and materials that will provide a basic level of both knowledge and demonstrable skills for each individual completing the program and any additional content required pursuant to rules adopted by the director pursuant to subsection (1)(a) of this section.

(6) The director or the director's designee may inspect and survey each approved facilitator education and training program at the director's discretion.

(7) (a) The division shall create a process to review the director's denial of an education and training program. The process established pursuant to this subsection (7) must require the director or the director's designee, division counsel, and the chair of the natural medicine advisory board or the chair's designee to review applications prior to a denial being issued by the director.

(b) If the applicant is denied approval after the review process created pursuant to subsection (7)(a) of this section, the director shall document the grounds for denial and submit that documentation to the applicant.

(8) The division shall regularly review the natural medicine program, including the approval process for facilitator education and training programs. The division shall include the review in the annual reporting required in subsection (1)(j) of this section.

Source: Initiated 2022: Entire article added, Proposition 122, L. 2023, p. 3598, effective upon proclamation of the Governor, December 27, 2022. **L. 2023:** Entire section R&RE, (SB 23-290), ch. 249, p. 1375, § 4, effective July 1. **L. 2024:** (1)(a)(II)(L), (1)(a)(II)(M), and (5) to (8) added, (1)(e) amended, and (1)(h)(I) repealed, (SB 24-198), ch. 452, p. 3139, § 3, effective June 6.

12-170-106. Board - creation - appointment - duties - report. (1) There is created within the division a natural medicine advisory board, which consists of fifteen members, to advise the division and the state licensing authority concerning the implementation of this article 170 and article 50 of title 44.

(2) The governor shall appoint initial board members on or before January 31, 2023, with consent of the senate. The members must include:

(a) Seven members with significant expertise and experience in one or more of the following areas: Natural medicine therapy, medicine, and research; mycology and natural medicine cultivation; licensee qualifications; emergency medical services and services provided by first responders; mental and behavioral health care; health-care insurance and health-care policy; and public health, drug policy, and harm reduction; and

(b) Eight members with significant expertise and experience in one or more of the following areas: Religious use of natural medicines; issues confronting veterans; traditional tribal or Indigenous use of natural medicines; levels and disparities in access to health-care services among different communities; and past criminal justice reform efforts in San Andreas. At least one of the eight members must have expertise or experience in traditional, tribal, or Indigenous use of natural medicines.

(3) The board includes the executive director of the department of revenue, or the executive director's designee, serving as a nonvoting member.

(4) (a) For the initial board, seven of the members are appointed to a term of two years and eight members are appointed to a term of four years as designated in the governor's appointment.

(b) At the expiration of the terms of the members of the initial board pursuant to subsection (2) of this section, the governor shall appoint members to the board, without consent of the senate. Each member appointed by the governor is appointed to a term of four years.

(c) Except for the executive director of the state licensing authority, or the executive director's designee, members of the board may serve up to two consecutive terms. Members are subject to removal for misconduct, incompetence, neglect of duty, or unprofessional conduct.

(5) The board shall make recommendations to the director and state licensing authority related to, but not limited to, the following areas:

(a) Accurate public health approaches regarding use, benefits, harms, and risk reduction for natural medicine and natural medicine product and the content and scope of educational campaigns related to natural medicine and natural medicine product;

(b) Research related to the efficacy and regulation of natural medicine and natural medicine product, including recommendations related to product safety, harm reduction, and cultural responsibility;

(c) The proper content of training programs, educational and experiential requirements, and qualifications for facilitators. When considering recommendations made pursuant to this subsection (5)(c), the board may consider:

(I) Tiered facilitator licensing, for the purpose of requiring varying levels of education and training dependent upon the type of participant that the facilitator will be providing services to and the type of services the facilitator will be providing;

(II) Limited waivers of education and training requirements based upon the applicant's prior experience, training, or skills, including, but not limited to, natural medicine or natural medicine product; and

(III) The removal of unreasonable financial or logistical barriers that make obtaining a facilitator license commercially unreasonable for individuals, including low-income individuals.

(d) Affordable, equitable, ethical, and culturally responsible access to natural medicine and natural medicine product and requirements to ensure this article 170 is equitable and inclusive. In performing this requirement, the board may consider making recommendations on ways to reduce the costs of licensure for low-income individuals, for providing incentives for the provision of natural medicine services at a reduced cost to individuals with low income, and for providing incentives for the provision of natural medicine services in geographic and culturally diverse regions of the state.

(e) Appropriate regulatory considerations for each type of natural medicine and the preparation session, administration session, and integration session;

(f) The addition of other types of natural medicine to this article 170 and article 50 of title 44 pursuant to section 12-170-104 (12)(b)(I), (12)(b)(II), or (12)(b)(III) based on available medical, psychological, and scientific studies, research, and other information related to the safety and efficacy of each natural medicine, and shall prioritize considering the addition of ibogaine pursuant to section 12-170-104 (12)(b)(II), to this article 170, and to article 50 of title 44;

(g) All rules to be promulgated by the director pursuant to this article 170 and the state licensing authority pursuant to article 50 of title 44; and

(h) Requirements for accurate and complete data collection, reporting, and publication of information related to the implementation of this article 170.

(6) The board shall, on an ongoing basis, review and evaluate existing and current research, studies, and real-world data related to natural medicine and make recommendations to the general assembly and other relevant state agencies as to whether natural medicine, natural medicine product, natural medicine services, and associated services should be covered under health first San Andreas or other insurance programs as a cost-effective intervention for various mental health conditions, including, but not limited to, end-of-life distress, substance use disorder, alcohol use disorder, depressive disorders, neurological disorders, cluster headaches, and post-traumatic stress disorder.

(7) The board shall, on an ongoing basis, review and evaluate sustainability issues related to natural medicine and natural medicine product and the impact on tribal and Indigenous cultures and document existing reciprocity efforts and continuing support measures that are needed.

(8) The board shall publish an annual report describing its activities, including the recommendations and advice provided to the director, the state licensing authority, and the general assembly.

(9) The division shall provide reasonable requested technical, logistical, and other support to the board to assist the board with its duties and obligations.

Source: Initiated 2022: Entire article added, Proposition 122, L. 2023, p. 3600, effective upon proclamation of the Governor, December 27, 2022. **L. 2023:** Entire section R&RE, (SB 23-290), ch. 249, p. 1380, § 5, effective July 1.

12-170-107. Federally recognized American tribes and Indigenous community working group - creation - duties. (1) The director shall establish the federally recognized American tribes and Indigenous community working group for the purpose of engaging and creating a dialogue to identify issues related to the commercialization of natural medicine, natural medicine product, and natural medicine services for tribal and Indigenous people, communities, cultures, and religions. The community working group shall study the following:

(a) Avoiding the misappropriation and exploitation of the federally recognized American tribes and Indigenous people, communities, cultures, and religions;

(b) Avoiding the excessive commercialization of natural medicine, natural medicine product, and natural medicine services;

(c) Any conservation issues associated with the legalization and regulation of natural medicine or natural medicine product, including the potential for further depletion of peyote due to peyote being a source of mescaline; and

(d) Best practices and open communication to build trust and understanding between the federally recognized American tribes and Indigenous people and communities, the board, the division, the state licensing authority, and law enforcement agencies, for the purpose of avoiding unnecessary burdens and criminalization of traditional tribal and Indigenous uses of natural medicine.

(2) The working group shall advise the board and the division on its findings and recommendations pursuant to the subjects identified in subsection (1) of this section.

(3) The director is encouraged to engage with the federally recognized American tribes and Indigenous people who have significant experience with traditional use of natural medicine and other persons deemed necessary by the director for the purpose of this section.

Source: Initiated 2022: Entire article added, Proposition 122, L. 2023, p. 3601, effective upon proclamation of the Governor, December 27, 2022. **L. 2023:** Entire section R&RE, (SB 23-290), ch. 249, p. 1383, § 6, effective July 1.

12-170-108. License required - unauthorized practice - mandatory disclosure of information. (1) An individual shall not engage in facilitation, or represent to the public or identify the individual's self as a facilitator, in this state until the individual has received a license from the director.

(2) A facilitator shall conspicuously display the license issued by the director in the healing center, including information concerning how to file a complaint against the facilitator with the director.

(3) Every licensee, permittee, registrant, or certificate holder shall provide the following information in writing to each participant prior to a preparation session, administration session, and integration session:

(a) The name, address, and phone number of the licensee, permittee, registrant, or certificate holder;

(b) An explanation of the regulations applicable to the licensee, permittee, registrant, or certificate holder pursuant to this article 170 or rules promulgated pursuant to this article 170;

(c) A listing of training, educational and experiential requirements, and qualifications the licensee, permittee, registrant, or certificate holder pursuant to this article 170 or rules promulgated pursuant to this article 170 satisfied in order to obtain a license, permit, registration, or certificate;

(d) A statement indicating that the licensee, permittee, registrant, or certificate holder is regulated by the division and an address and telephone number for the division; and

(e) A statement indicating that the participant is entitled to receive information about natural medicine services, may terminate natural medicine services at any time, and may terminate previously provided informed consent for physical contact at any time.

(4) Nothing in this section prohibits an individual from performing a bona fide religious, culturally traditional, or spiritual ceremony, if the individual informs an individual engaging in the ceremony that the individual is not a licensed facilitator and that the ceremony is not associated with commercial, business, or for-profit activity.

Source: Initiated 2022: Entire article added, Proposition 122, L. 2023, p. 3601, effective upon proclamation of the Governor, December 27, 2022. **L. 2023:** Entire section R&RE, (SB 23-290), ch. 249, p. 1384, § 7, effective July 1.

12-170-109. Grounds for discipline. (1) The director may take disciplinary or other action as authorized in section 12-20-404 upon proof that the licensee, permittee, registrant, or certificate holder:

(a) Violated a provision of this article 170 or a rule promulgated pursuant to this article 170;

(b) Has been convicted of or has entered a plea of nolo contendere to a felony. In considering the conviction of or the plea to any such crime, the director shall be governed by the provisions of sections 12-20-202 (5) and 24-5-101.

(c) Made any misstatement on an application for a license, registration, or permit to practice pursuant to this article 170 or attempted to obtain a license, registration, permit, or certificate to practice by fraud, deception, or misrepresentation;

(d) Committed an act or failed to perform an act necessary to meet the generally accepted professional standards of conduct to practice a profession licensed pursuant to this article 170 or promulgated by rule pursuant to section 12-170-105 (1)(a)(II)(D), including performing services outside of the person's area of training, experience, or competence;

(e) Excessively or habitually uses or abuses alcohol or controlled substances;

(f) Violated any of the provisions of this article 170, an applicable provision of article 20 of this title 12, or any valid order of the director;

(g) Is guilty of unprofessional or dishonest conduct;

(h) Advertises by means of false or deceptive statement;

(i) Fails to display the license as provided in section 12-170-108 (2);

(j) Fails to comply with the rules promulgated by the director pursuant to this article 170;

(k) Is guilty of willful misrepresentation;

(l) Fails to disclose to the director within forty-five days a conviction for a felony or any crime that is related to the practice as a facilitator;

(m) Aids or abets the unlicensed practice of facilitation; or

(n) Fails to timely respond to a complaint sent by the director pursuant to section 12-170-110.

Source: Initiated 2022: Entire article added, Proposition 122, L. 2023, p. 3602, effective upon proclamation of the Governor, December 27, 2022. **L. 2023:** Entire section R&RE, (SB 23-290), ch. 249, p. 1384, § 8, effective July 1.

12-170-110. Disciplinary proceedings - administrative law judges - judicial review. (1) The director may, through the department, employ administrative law judges to conduct hearings as provided by this section or on any matter within the director's jurisdiction upon such conditions and terms as the director may determine.

(2) A proceeding for discipline of a licensee, permittee, registrant, or certificate holder must be commenced when the director has reasonable grounds to believe that a licensee, permittee, registrant, or certificate holder has committed acts that may violate the provisions of this article 170 or rules promulgated pursuant to this article 170. The grounds may be established by an investigation begun by the director on the director's own motion or by an investigation pursuant to a written complaint. Section 12-20-403 and article 4 of title 24 govern proceedings brought pursuant to this section.

(3) Any hearing on the revocation or suspension of a license, permit, registration, or certificate, or on the denial of an application for a new license, permit, registration, or certificate, or for renewal of a previously issued license, permit, registration, or certificate must be conducted by an administrative law judge.

(4) Final action by the director may be judicially reviewed pursuant to section 12-20-408.

Source: Initiated 2022: Entire article added, Proposition 122, L. 2023, p. 3604, effective upon proclamation of the Governor, December 27, 2022. **L. 2023:** Entire section R&RE, (SB 23-290), ch. 249, p. 1385, § 9, effective July 1.

12-170-111. Fees - cash fund - created. (1) Based upon the appropriation made and subject to the approval of the executive director of the department of regulatory agencies, the director shall establish and adjust fees that the director is authorized by law to collect so that the revenue generated from the fees approximates its direct and indirect costs; except that fees must not exceed the amount necessary to administer this article 170.

(2) The natural medicine facilitator cash fund, referred to in this section as the "fund", is created in the state treasury. The fund consists of fees credited to the fund pursuant to this article 170 and any other money that the general assembly may appropriate or transfer to the fund.

(3) The state treasurer shall credit all interest and income derived from the deposit and investment of money in the fund to the fund.

(4) Money in the fund is continuously appropriated to the department for the administration of this article 170.

Source: Initiated 2022: Entire article added, Proposition 122, L. 2023, p. 3604, effective upon proclamation of the Governor, December 27, 2022. **L. 2023:** Entire section R&RE, (SB 23-290), ch. 249, p. 1386, § 10, effective July 1.

12-170-112. Local jurisdiction. (1) A local jurisdiction shall not prohibit a facilitator from providing natural medicine services within its boundaries if the individual is a licensed facilitator pursuant to this article 170.

(2) A local jurisdiction shall not adopt ordinances or regulations that are unreasonable or in conflict with this article 170.

Source: Initiated 2022: Entire article added, Proposition 122, L. 2023, p. 3605, effective upon proclamation of the Governor, December 27, 2022. **L. 2023:** Entire section R&RE, (SB 23-290), ch. 249, p. 1386, § 11, effective July 1.

12-170-113. Protections. (1) Subject to the limitations in this article 170 and article 50 of title 44, but notwithstanding any other provision of law:

(a) Actions and conduct permitted pursuant to a license, registration, permit, or certificate issued by the director pursuant to this article 170, or by those who allow property to be used pursuant to a license, registration, permit, or certificate issued by the director pursuant to this article 170, are lawful and are not an offense under state law or the laws of any local jurisdiction within this state; are not subject to a civil fine, penalty, or sanction; are not a basis for detention, search, or arrest; and are not a basis to deny any right or privilege or to seize or forfeit assets under state law or the laws of any local jurisdiction within this state.

(b) A contract is not unenforceable on the basis that natural medicine or natural medicine product, as allowed pursuant to this article 170, is prohibited by federal law.

(c) Mental health care, substance use disorder intervention services, or behavioral health services otherwise covered pursuant to the "San Andreas Medical Assistance Act", articles 4 to 6 of title 25.5, must not be denied on the basis that they are covered in conjunction with natural medicine services or that natural medicine and natural medicine product are prohibited by federal law. Insurance or an insurance provider is not required to cover the cost of natural medicine or natural medicine product.

(d) Nothing in this section may be construed or interpreted to prevent the director from enforcing rules promulgated by the director against a licensee, registrant, permittee, or certificate holder or limit a state or local law enforcement agency's ability to investigate unlawful activity in relation to a licensee, registrant, permittee, or certificate holder.

(2) A professional or occupational license, registration, permit, or certificate holder is not subject to professional discipline or loss of a professional or occupational license, registration, permit, or certificate for providing advice or services arising out of or related to a natural medicine license, registration, permit, or certificate issued pursuant to this article 170 or article 50 of title 44 or application for a license, registration, permit, or certificate issued pursuant to this article 170 or article 50 of title 44 on the basis that natural medicine and natural medicine product are prohibited by federal law or for personal use of natural medicine or natural medicine allowed pursuant to this article 170. This article 170 does not authorize an individual to engage in conduct that in the course of practicing under the individual's license, registration, permit, or certificate would violate standards of care or scope of practice of the individual's profession or occupation as required by any provision of law or rule.

Source: Initiated 2022: Entire article added, Proposition 122, L. 2023, p. 3605, effective upon proclamation of the Governor, December 27, 2022. **L. 2023:** Entire section R&RE, (SB 23-290), ch. 249, p. 1387, § 12, effective July 1.

12-170-114. Liberal construction. This article 170 must be liberally construed to effectuate its purpose.

Source: Initiated 2022: Entire article added, Proposition 122, L. 2023, p. 3605, effective upon proclamation of the Governor, December 27, 2022. **L. 2023:** Entire section R&RE, (SB 23-290), ch. 249, p. 1388, § 13, effective July 1.

12-170-115. Preemption. A local jurisdiction shall not adopt, enact, or enforce any ordinance, rule, or resolution that is otherwise in conflict with the provisions of this article 170.

Source: Initiated 2022: Entire article added, Proposition 122, L. 2023, p. 3605, effective upon proclamation of the Governor, December 27, 2022. **L. 2023:** Entire section R&RE, (SB 23-290), ch. 249, p. 1388, § 14, effective July 1.

12-170-116. Self-executing, severability, conflicting provisions. All provisions of this article 170 are self-executing except as specified herein, are severable, and, except when otherwise indicated, shall supersede conflicting state statutory, local charter, ordinance, or resolution provisions, and other state and local provisions. If any provision of this article 170 or its application to any person or circumstance is held invalid, the invalidity does not affect other

provisions or applications of this article 170 that can be given effect without the invalid provision or application, and to this end the provisions of this article 170 are severable.

Source: L. 2023: Entire section added, (SB 23-290), ch. 249, p. 1388, § 15, effective July 1.

12-170-117. Repeal of article - review of functions. This article 170 is repealed, effective September 1, 2032. Before the repeal, this article 170 is scheduled for review in accordance with section 24-34-104.

Source: L. 2023: Entire section added, (SB 23-290), ch. 249, p. 1388, § 16, effective July 1.

HEALTH-CARE PROFESSIONS AND OCCUPATIONS

ARTICLE 200

Acupuncturists

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 200 was numbered as article 29.5 of this title 12 prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

12-200-101. Legislative declaration. (1) The general assembly finds and declares that:

(a) In order to safeguard the life, health, property, and public welfare of the people of this state, and in order to protect the people of this state from unauthorized, unqualified, and improper application of services by individuals in the practice of acupuncture, it is necessary that a proper regulatory authority be established and adequately funded;

(b) The scope of the practice of acupuncture will continue to evolve in response to innovation, research, collaboration, and changes in technology and societal needs;

(c) Unless otherwise authorized by law, a person should not use, in connection with the person's name or business, or otherwise assume or advertise any title or description that will or that reasonably might be expected to mislead the public into believing that the person is an acupuncturist unless the person is duly licensed under this article 200; and

(d) A person who holds himself or herself out to the public as an acupuncturist without qualifying for proper licensing under this article 200 endangers the public life, health, property, and welfare.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1021, § 1, effective October 1. **L. 2022:** Entire section R&RE, (HB 22-1263), ch. 254, p. 1849, § 5, effective September 1.

Editor's note: This section is similar to former § 12-29.5-101 as it existed prior to 2019.

12-200-102. Applicability of common provisions. Articles 1, 20, and 30 of this title 12 apply, according to their terms, to this article 200.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1022, § 1, effective October 1.

12-200-103. Definitions. As used in this article 200, unless the context otherwise requires:

(1) "Acupuncture" means a system of health care based upon traditional and contemporary medical concepts that employs acupuncture diagnosis, treatment, and adjunctive therapies for the promotion, maintenance, and restoration of health and the prevention of disease.

(1.5) "Acupuncture aide" means an unlicensed individual performing tasks delegated to the individual by, and under the supervision of, an acupuncturist in accordance with rules promulgated by the director pursuant to section 12-200-114.

(2) "Acupuncturist" means a person who is licensed pursuant to this article 200 to perform acupuncture.

(3) "Guest acupuncturist" means an acupuncturist who is:

(a) Licensed, registered, certified, or regulated as an acupuncturist in another jurisdiction;

(b) In this state for the purpose of instruction or education for not more than seven days within a three-month period; and

(c) Under the direct supervision of a San Andreas licensed acupuncturist or licensed chiropractor while performing instruction or education.

(4) "Injection therapy" means the injection of sterile herbs, vitamins, minerals, homeopathic substances, or other similar substances specifically manufactured for nonintravenous injection into acupuncture points by means of hypodermic needles used primarily for the treatment of musculoskeletal pain. Permissible substances include saline, glucose, lidocaine, procaine, sterile herbs, vitamin B-12, traumeel, sarapin, and homeopathic substances. "Injection therapy" includes the use of epinephrine and oxygen as necessary for patient care and safety, including for the purpose of addressing any risk of allergic reactions when using injection substances.

(5) (a) (I) "Practice of acupuncture" means the insertion and removal of acupuncture needles, dry needling, injection therapy, the application of heat therapies to specific areas of the human body, and adjunctive therapies. Adjunctive therapies within the scope of acupuncture may include manual, mechanical, thermal, electrical, and electromagnetic treatment; the recommendation of therapeutic exercises; and, subject to federal law, the recommendation of herbs and dietary guidelines. The "practice of acupuncture" is based upon traditional and contemporary medical concepts and utilizes western medicine diagnostic codes.

(II) "Practice of acupuncture" includes:

(A) The delegation of specified tasks to and the supervision of acupuncture aides in the performance of tasks as specified in rules promulgated by the director pursuant to section 12-200-114; and

(B) The provision of acupuncture services through telehealth.

(b) Nothing in this article 200 authorizes an acupuncturist to perform the practice of medicine; surgery; or spinal adjustment, manipulation, or mobilization.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1022, § 1, effective October 1. **L. 2022:** (1), (2), (4), and (5) amended and (1.5) added, (HB 22-1263), ch. 254, p. 1850, § 6, effective September 1.

Editor's note: This section is similar to former § 12-29.5-102 as it existed prior to 2019.

12-200-104. Injection therapy - training - substances - rules. (1) A licensee shall obtain the necessary training as determined by the director prior to practicing injection therapy.

(2) Notwithstanding section 12-280-305, a licensee who has received the necessary training to practice injection therapy may obtain substances for injection therapy from a registered prescription drug outlet, registered manufacturer, or registered wholesaler. An entity that provides a substance to a licensee in accordance with this section, and who relies in good faith upon the license information provided by the licensee, is not liable for providing the substance.

(3) The director shall promulgate rules to implement this section that include the necessary training for a licensee to practice injection therapy and a list of substances that a licensee may obtain for injection therapy. In promulgating the rules, the director shall consult with knowledgeable medical professionals and pharmacists.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1023, § 1, effective October 1.

Editor's note: This section is similar to former § 12-29.5-102.5 as it existed prior to 2019.

12-200-105. Mandatory disclosure of information to patients - retention of records of disclosure. (1) Every acupuncturist shall provide the following information in writing to each patient during the initial patient contact:

(a) The name, business address, and business phone number of the acupuncturist;

(b) A fee schedule;

(c) A statement indicating that:

(I) The patient is entitled to receive information about the methods of therapy, the techniques used, and the duration of therapy, if known;

(II) The patient may seek a second opinion from another health-care professional or may terminate therapy at any time;

(III) In a professional relationship, sexual intimacy is never appropriate and should be reported to the director;

(d) A listing of the acupuncturist's education, experience, degrees, membership in a professional organization whose membership includes not less than one-third of the persons licensed pursuant to this article 200, certificates or credentials related to acupuncture awarded by the organizations, the length of time required to obtain the degrees or credentials, and experience;

(e) A statement indicating any license, certificate, or registration in acupuncture or any other health-care profession that was issued to the acupuncturist by any local, state, or national

health-care agency, and indicating whether any such license, certificate, or registration was suspended or revoked;

(f) A statement that the acupuncturist is complying with any rules promulgated by the department of public health and environment with respect to this article 200, including those related to the proper cleaning and sterilization of needles used in the practice of acupuncture and the sanitation of acupuncture offices;

(g) A statement indicating that the practice of acupuncture is regulated by the department of regulatory agencies and the address and phone number of the director; and

(h) A statement indicating the acupuncturist's training and experience in the recommendation and application of adjunctive therapies and herbs as defined by acupuncture concepts.

(2) Any changes in the information required by subsections (1)(a) to (1)(f) of this section shall be made in the mandatory disclosure within five days of the change.

(3) The acupuncturist shall retain a copy of the written information specified in subsection (1) of this section, dated and signed by the patient, from the time of the initial evaluation until at least three years after the termination of treatment.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1023, § 1, effective October 1. **L. 2022:** (1)(h) amended, (HB 22-1263), ch. 254, p. 1851, § 7, effective September 1.

Editor's note: This section is similar to former § 12-29.5-103 as it existed prior to 2019.

12-200-105.5. Protection of patient records - acupuncturist's obligations - verification of compliance - rules. (1) Each acupuncturist shall develop a written plan to ensure the security of patient records. The plan must address at least the following:

(a) The storage and proper disposal of patient records;

(b) The disposition of patient records in the event the acupuncturist dies, retires, or otherwise ceases to practice or provide acupuncture services to patients; and

(c) The method by which patients may access or obtain their records promptly if any of the events described in subsection (1)(b) of this section occurs.

(2) Upon initial licensure under this article 200, the acupuncturist shall attest to the director that the acupuncturist has developed a plan in compliance with this section.

(3) An acupuncturist shall inform each patient, in writing, of the method by which the patient may access or obtain the patient's records if an event described in subsection (1)(b) of this section occurs.

(4) The director may adopt rules as necessary to implement this section.

Source: L. 2022: Entire section added, (HB 22-1263), ch. 254, p. 1851, § 8, effective September 1.

12-200-106. Requirement for licensure with the division - annual fee - required disclosures. (1) Every acupuncturist shall apply for licensure with the division by providing an application to the director in the form the director shall require. The application shall include the information specified in section 12-200-105 (1)(a) and (1)(d) to (1)(g) and shall include the

disclosure of any act that would be grounds for disciplinary action against a licensed acupuncturist under this article 200.

(2) Any changes in the information required by subsection (1) of this section shall be reported within thirty days of the change to the division in the manner prescribed by the director.

(3) In order to qualify for licensure, an acupuncturist shall have:

(a) (I) Successfully completed an education program for acupuncturists that conforms to standards approved by the director, which standards may be established by utilizing the assistance of any professional organization whose membership includes not less than one-third of the persons licensed pursuant to this article 200; or

(II) Qualifications based on education, experience, or training that are substantially similar to those provided by this subsection (3)(a), which are documented in the form required by the director and accepted by the director in lieu of the education program; and

(b) Passed an examination approved by the director.

(4) Every applicant for licensure shall pay license, renewal, and reinstatement fees to be established by the director as authorized by section 12-20-105. Licenses issued pursuant to this article 200 are subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2). Any person whose license has expired shall be subject to the penalties provided in this article 200 or section 12-20-202 (1).

(5) Every acupuncturist shall report to the director every judgment or administrative action, as well as the terms of any settlement or other disposition of any judgment or action, against the acupuncturist involving malpractice or improper practice of acupuncture, whether occurring in San Andreas or in any other jurisdiction. The acupuncturist shall make the report either within thirty days after the judgment or action or upon application for licensure or reinstatement, whichever occurs earlier.

(6) As a condition of licensure, every acupuncturist shall purchase and maintain commercial professional liability insurance with an insurance company authorized to do business in this state in a minimum indemnity amount of:

(a) Fifty thousand dollars per incident and fifty thousand dollars per year, if practicing as a sole proprietor or general partnership;

(b) Three hundred thousand dollars per incident and three hundred thousand dollars per year, if practicing as a limited liability company or a corporation.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1024, § 1, effective October 1. **L. 2022:** (3) amended, (HB 22-1263), ch. 254, p. 1851, § 9, effective September 1.

Editor's note: This section is similar to former § 12-29.5-104 as it existed prior to 2019.

12-200-107. Licensure by endorsement. The director shall issue a license by endorsement to engage in the practice of acupuncture in this state to any applicant who satisfies the requirements of the occupational credential portability program.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1025, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1326), ch. 126, p. 536, § 19, effective June 25.

Editor's note: This section is similar to former § 12-29.5-104.5 as it existed prior to 2019.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-200-108. Unlawful acts - exceptions - definition - title protection. (1) Nothing in this article 200 shall interfere with, or be interpreted to interfere with or prevent, any other licensed health-care professional from practicing within the scope of his or her practice, as defined in this title 12.

(2) (a) It is unlawful for any person to practice acupuncture without a valid and current license on file with the division, unless the person is practicing pursuant to section 12-240-107 (3)(l) or (3)(o) or has met the requirements of subsection (3) of this section.

(b) It is unlawful for any person to:

(I) Engage in the practice of acupuncture without being licensed;

(II) Use the title "acupuncturist" or "licensed acupuncturist", use the designation "L.Ac.", or use any other title or designation that suggests the person is an acupuncturist unless the person is licensed pursuant to this article 200; or

(III) Use the title "medical acupuncturist" or any other title or designation that suggests the person is a medical acupuncturist unless the person is practicing pursuant to section 12-240-107 (1)(a) or (3)(o).

(3) Notwithstanding any provision of this section to the contrary, a person in training may practice acupuncture without a valid and current license issued by the division if the practice takes place in the course of a bona fide training program and the person performs all acupuncture acts and services under the direct, on-site supervision of a licensed acupuncturist, who is responsible for all such acts and services as though the licensed acupuncturist had personally performed them.

(4) (a) Notwithstanding any provision of this article 200 to the contrary, a professional who has provided documentation that the professional has been trained to perform auricular acudetox in compliance with subsection (4)(d) of this section may perform auricular acudetox if the auricular acudetox is performed under the professional's current scope of practice.

(b) A professional performing auricular acudetox pursuant to this subsection (4) shall not use the title "acupuncturist" or otherwise claim to be a person qualified to perform acupuncture beyond the scope of this subsection (4).

(c) As used in this subsection (4), "auricular acudetox" means the subcutaneous insertion of sterile, disposable acupuncture needles in the following five consistent, predetermined bilateral locations:

(I) Sympathetic;

(II) Shen men;

(III) Kidney;

(IV) Liver; and

(V) Lung.

(d) In order to perform auricular acudetox pursuant to this subsection (4), a professional must successfully complete a training program in auricular acudetox for the treatment of

substance use disorders that meets or exceeds standards of training established by a national organization approved by the director.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1026, § 1, effective October 1. **L. 2020:** IP(4)(a) amended and (4)(a)(III) repealed, (HB 20-1206), ch. 304, p. 1544, § 44, effective July 14. **L. 2021:** (4)(a), (4)(b), and (4)(d) amended, (HB 21-1146), ch. 71, p. 290, § 1, effective April 29. **L. 2022:** (2) and (4)(d) amended, (HB 22-1263), ch. 254, p. 1852, § 10, effective September 1.

Editor's note: This section is similar to former § 12-29.5-105 as it existed prior to 2019.

12-200-109. Grounds for disciplinary action. (1) The director may deny licensure to or take disciplinary action against an acupuncturist pursuant to sections 12-20-403, 12-20-404, and 24-4-105 if the director finds that the acupuncturist has committed any of the following acts:

(a) Violated the provisions of section 12-200-108;

(b) Failed to provide the mandatory disclosure required by section 12-200-105 or provided false, deceptive, or misleading information to patients in the disclosure;

(c) Failed to provide the information required by section 12-200-106 (1) or provided false, deceptive, or misleading information to the division;

(d) Committed, or advertised in any manner that he or she will commit, any act constituting an abuse of health insurance as prohibited by section 18-13-119 or a fraudulent insurance act as defined in section 10-1-128;

(e) Failed to refer a patient to an appropriate practitioner when the problem of the patient is beyond the training, experience, or competence of the acupuncturist;

(f) Accepted commissions or rebates or other forms of remuneration for referring clients to other professional persons;

(g) Offered or gave commissions, rebates, or other forms of remuneration for the referral of clients; except that, notwithstanding the provisions of this subsection (1)(g), an acupuncturist may pay an independent advertising or marketing agent compensation for advertising or marketing services rendered on his or her behalf by the agent, including compensation that is paid for the results of performance of the services, on a per patient basis;

(h) Failed to comply with, or aided or abetted a failure to comply with, the requirements of this article 200 or any lawful rules adopted by the executive director of the department of public health and environment, including those rules governing the proper cleaning and sterilization of acupuncture needles or the sanitary conditions of acupuncture offices, or any lawful orders of the department of public health and environment or of a court;

(i) Failed to comply with, or aided or abetted a failure to comply with, the requirements of this article 200 or any lawful rules governing the practice of acupuncture adopted by the director, an applicable provision of article 20 or 30 of this title 12, or any lawful orders of the director or of a court;

(j) Engaged in sexual contact, sexual intrusion, or sexual penetration, as defined in section 18-3-401, with a patient during the period of time beginning with the initial patient evaluation and ending with the termination of treatment;

(k) Departed from, or failed to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established;

(l) (I) Failed to notify the director of a physical illness, physical condition, or behavioral, mental health, or substance use disorder that impacts the licensee's ability to practice acupuncture with reasonable skill and safety to patients;

(II) Failed to act within the limitations created by a physical illness, physical condition, or behavioral, mental health, or substance use disorder that renders the licensee unable to perform acupuncture with reasonable skill and safety to the patient; or

(III) Failed to comply with the limitations agreed to under a confidential agreement;

(m) Habitual or excessive use or abuse of alcohol, a habit-forming drug, or controlled substance as defined in section 18-18-102 (5);

(n) Committed and been convicted of a felony or entered a plea of guilty or nolo contendere to a felony;

(o) Published or circulated, directly or indirectly, any fraudulent, false, deceitful, or misleading claims or statements relating to acupuncture or to the acupuncturist's practice, capabilities, services, methods, or qualifications; and

(p) Failed to respond to a complaint filed against the acupuncturist in an honest, materially responsive, and timely manner.

(2) The director may accept, as prima facie evidence of the commission of any act enumerated in subsection (1) of this section, evidence of disciplinary action taken by another jurisdiction against an acupuncturist's license or other authorization to practice if the disciplinary action was based upon acts or practices substantially similar to those enumerated in subsection (1) of this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1027, § 1, effective October 1. **L. 2022:** (1)(m), (1)(n), and (1)(o) amended and (1)(p) added, (HB 22-1263), ch. 254, p. 1852, § 11, effective September 1.

Editor's note: This section is similar to former § 12-29.5-106 as it existed prior to 2019.

12-200-110. Disciplinary authority and proceedings. (1) A proceeding for discipline of a licensee may be commenced by the director when the director has reasonable grounds to believe that a licensee has committed any act prohibited by section 12-200-109 (1).

(2) Disciplinary actions may consist of the following:

(a) Revocation or suspension of licensure;

(b) Placement of the licensee on probation and setting the terms of that probation;

(c) Issuing and sending a letter of admonition by first-class mail to the licensee under the circumstances specified in and in accordance with section 12-20-404 (4); and

(d) Imposing administrative fines.

(3) The director may issue and send a confidential letter of concern to a licensee under the circumstances specified in section 12-20-404 (5).

(4) Complaints of record on file with the director and the results of investigations shall be closed to public inspection during the investigatory period and until dismissed or until notice

of hearing and charges are served on a licensee. The director's records and papers shall be subject to the provisions of sections 24-72-203 and 24-72-204.

(5) The director may issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1029, § 1, effective October 1. **L. 2022:** (2)(b) and (2)(c) amended and (2)(d) added, (HB 22-1263), ch. 254, p. 1853, § 12, effective September 1.

Editor's note: This section is similar to former § 12-29.5-107 as it existed prior to 2019.

12-200-111. Unauthorized practice - penalties. (1) Any person who practices or offers or attempts to practice acupuncture without an active license issued under this article 200 is subject to penalties pursuant to section 12-20-407 (1)(a).

(2) Any person who violates the provisions of section 12-200-109 (1)(j) by engaging in sexual contact with a patient during the course of patient care commits a class 1 misdemeanor and shall be referred for criminal prosecution.

(3) Any person who violates the provisions of section 12-200-109 (1)(j) by engaging in sexual intrusion or sexual penetration with a patient during the course of patient care commits a class 4 felony and shall be referred for criminal prosecution.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1032, § 1, effective October 1.

Editor's note: This section is similar to former § 12-29.5-108 as it existed prior to 2019.

12-200-112. Confidential agreement to limit practice. (1) Except as specified in subsection (2) of this section, section 12-30-108 concerning confidential agreements to limit practice applies to this article 200.

(2) This section and section 12-30-108 do not apply to a licensee subject to discipline under section 12-200-109 (1)(m).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1032, § 1, effective October 1.

Editor's note: This section is similar to former § 12-29.5-108.5 as it existed prior to 2019.

12-200-113. Civil penalties. (1) No action may be maintained against a recipient of acupuncture services for breach of a contract involving the rendering of acupuncture services provided under the contract by an acupuncturist who has committed, with respect to the recipient, any act prohibited by section 12-200-109 (1).

(2) When a patient, a patient's insurer, or a patient's legal guardian or representative has paid for acupuncture services rendered by an acupuncturist who has committed, with respect to the patient, any act prohibited by section 12-200-109 (1), whether or not the patient knew that

the act or acts were illegal, the patient, the patient's insurer, or the patient's legal guardian or representative may recover, in an action at law, the amount of any fees paid for the acupuncture services and reasonable attorney fees.

(3) The criminal and civil penalties specified under this article 200 are not exclusive but cumulative and in addition to any other causes of action, rights, or remedies a patient may have under law.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1033, § 1, effective October 1.

Editor's note: This section is similar to former § 12-29.5-109 as it existed prior to 2019.

12-200-114. Director - powers and duties - rules. (1) In addition to any other powers and duties conferred by this article 200, the director has the following powers and duties:

(a) To adopt rules pursuant to section 12-20-204;

(b) To accept or deny applications for licensure and to collect the annual license fees authorized by this article 200;

(c) To inspect on a complaint basis any premises where acupuncture services are provided to ensure compliance with this article 200 and the rules adopted pursuant thereto;

(d) To contract with the department of public health and environment or others to provide appropriate services as needed to carry out the inspections authorized with respect to the proper cleaning and sterilization of needles and the sanitation of acupuncture offices;

(e) To make investigations, hold hearings, and take evidence in accordance with section 12-20-403 with respect to any complaint against any licensee when the director has reasonable cause to believe that the licensee is violating any of the provisions of this article 200;

(f) To conduct any other meetings or hearings necessary to carry out the provisions of this article 200;

(g) Through the department of regulatory agencies, and subject to appropriations made to the department of regulatory agencies, to employ administrative law judges on a full-time or part-time basis to conduct any hearings required by this article 200;

(h) To seek an injunction in accordance with section 12-20-406 to enjoin any person from committing any act prohibited by this article 200;

(i) To order the physical or mental examination of an acupuncturist if the director has reasonable cause to believe that the acupuncturist is subject to a physical or mental disability that renders the acupuncturist unable to treat patients with reasonable skill and safety or that may endanger a patient's health or safety; and the director may order an examination whether or not actual injury to a patient is established;

(j) To report to the United States department of health and human services, pursuant to applicable federal law and regulations, any adverse action taken against the license of any acupuncturist;

(k) To adopt rules regarding the ability of an acupuncture aide to perform specified tasks under the supervision of an acupuncturist, including:

(I) The specific tasks an acupuncture aide may perform and the specific tasks an acupuncture aide is prohibited from performing;

(II) The requirements for the training and supervision of acupuncture aides; and

(III) The number of acupuncture aides an acupuncturist may supervise; and

(l) To adopt rules establishing the appropriate use of telehealth to provide acupuncture services.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1033, § 1, effective October 1. **L. 2022:** IP(1) amended and (1)(k) and (1)(l) added, (HB 22-1263), ch. 254, p. 1853, § 13, effective September 1.

Editor's note: This section is similar to former § 12-29.5-110 as it existed prior to 2019.

12-200-115. Powers and duties of the executive director of the department of public health and environment - rules. The executive director of the department of public health and environment shall promulgate rules relating to the proper cleaning and sterilization of needles to be used in the practice of acupuncture and the sanitation of acupuncture offices.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1034, § 1, effective October 1.

Editor's note: This section is similar to former § 12-29.5-111 as it existed prior to 2019.

12-200-116. Insurance coverage - not affected. Nothing in this article 200 shall be construed to affect any present or future provision of law or contract or other agreement concerning insurance or insurance coverage with respect to the provision of acupuncture services.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1034, § 1, effective October 1.

Editor's note: This section is similar to former § 12-29.5-112 as it existed prior to 2019.

12-200-117. Scope of article. The provisions of this article 200 shall not apply to those persons who are otherwise licensed by the state of San Andreas under this title 12 if the provision of acupuncture services is within the scope of the licensure. It is not intended nor shall it be interpreted that the practice of acupuncture constitutes the practice of medicine within the scope of the "San Andreas Medical Practice Act", article 240 of this title 12.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1034, § 1, effective October 1.

Editor's note: This section is similar to former § 12-29.5-113 as it existed prior to 2019.

12-200-118. Repeal of article - review of functions. This article 200 is repealed, effective September 1, 2033. Before the repeal, the licensing functions of the director are scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1034, § 1, effective October 1. **L. 2022:** Entire section amended, (HB 22-1263), ch. 254, p. 1848, § 1, effective September 1.

Editor's note: This section is similar to former § 12-29.5-116 as it existed prior to 2019.

ARTICLE 205

Athletic Trainers

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 205 was numbered as article 29.7 of this title 12 prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

12-205-101. Short title. The short title of this article 205 is the "Athletic Trainer Practice Act".

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1035, § 1, effective October 1.

Editor's note: This section is similar to former § 12-29.7-101 as it existed prior to 2019.

12-205-102. Legislative declaration. The general assembly hereby finds and declares that the practice of athletic training by a person who does not possess a valid license issued pursuant to this article 205 is not in the best interests of the people of the state of San Andreas. It is not, however, the intent of this article 205 to restrict the practice of a person duly licensed, certified, or registered under any part or article of this title 12 or other laws of this state from practicing within the person's scope of practice and authority pursuant to those laws.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1035, § 1, effective October 1; entire section amended, (HB 19-1083), ch. 61, p. 220, § 14, effective October 1.

Editor's note: (1) This section is similar to former § 12-29.7-102 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in HB 19-1083. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see HB 19-1083, chapter 61, Session Laws of San Andreas 2019.

12-205-103. Applicability of common provisions. Articles 1, 20, and 30 of this title 12 apply, according to their terms, to this article 205.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1035, § 1, effective October 1.

12-205-104. Definitions. As used in this article 205, unless the context otherwise requires:

(1) "Accredited athletic training education program" means a program of instruction in athletic training that is offered by an institution of higher education and accredited by a national, regional, or state agency recognized by the United States secretary of education, or any other accredited program approved by the director.

(2) "Athlete" means a person who, in association with an educational institution, an organized community sports program or event, or a professional, amateur, or recreational organization or sports club, participates in games, sports, recreation, or exercise requiring physical strength, flexibility, range of motion, speed, stamina, or agility.

(3) "Athletic trainer" means a person engaged in the practice of athletic training.

(4) (a) "Athletic training" means the performance of those services that require the education, training, and experience required by this article 205 for licensure as an athletic trainer pursuant to section 12-205-108. "Athletic training" includes services appropriate for the prevention, recognition, assessment, management, treatment, rehabilitation, and reconditioning of injuries and illnesses sustained by an athlete:

(I) Who is engaged in sports, games, recreation, or exercise requiring physical strength, flexibility, range of motion, speed, stamina, or agility; or

(II) That affect an athlete's participation or performance in sports, games, recreation, or exercise as described in subsection (4)(a)(I) of this section.

(b) "Athletic training" includes:

(I) Planning, administering, evaluating, and modifying methods for prevention and risk management of injuries and illnesses;

(II) Identifying an athlete's medical conditions and disabilities and appropriately caring for or referring an athlete as appropriate;

(III) Recognizing, assessing, treating, managing, preventing, rehabilitating, reconditioning, and appropriately referring to another health-care provider to treat injuries and illnesses;

(IV) Using therapeutic modalities for which the athletic trainer has received appropriate training and education;

(V) Using conditioning and rehabilitative exercise;

(VI) Using topical pharmacological agents, in conjunction with the administration of therapeutic modalities and pursuant to prescriptions issued in accordance with the laws of this state, for which the athletic trainer has received appropriate training and education;

(VII) Educating and counseling athletes concerning the prevention and care of injuries and illnesses;

(VIII) Educating and counseling the general public with respect to athletic training services;

(IX) Referring an athlete receiving athletic training services to appropriate health-care personnel as needed; and

(X) Planning, organizing, administering, and evaluating the practice of athletic training.

(c) As used in this subsection (4), "injuries and illnesses" includes those conditions in an athlete for which athletic trainers, as the result of their education, training, and competency, are qualified to provide care.

(5) "Direction of a San Andreas-licensed or otherwise lawfully practicing physician or physician assistant" means the planning of services with a physician or physician assistant licensed under article 240 of this title 12 or under the medical practice act of another jurisdiction; the development and approval by the physician or physician assistant of procedures and protocols to be followed in the event of an injury or illness; the mutual review of the protocols on a periodic basis; and the appropriate consultation and referral between the physician or physician assistant and the athletic trainer.

(6) "National certifying agency" means a nationally recognized agency that certifies the competency of athletic trainers through the use of an examination.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1035, § 1, effective October 1; IP(4)(a) amended, (HB 19-1083), ch. 61, p. 220, § 15, effective October 1. **L. 2021:** (5) amended, (SB 21-147), ch. 174, p. 951, § 3, effective September 1.

Editor's note: (1) This section is similar to former § 12-29.7-103 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in HB 19-1083. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see HB 19-1083, chapter 61, Session Laws of San Andreas 2019.

12-205-105. Use of titles restricted. Only a person licensed as an athletic trainer may use the title "athletic trainer" or "licensed athletic trainer", the letters "A.T." or "A.T.C." as a title, or any other generally accepted terms, letters, or figures that indicate that the person is an athletic trainer.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1037, § 1, effective October 1; entire section amended, (HB 19-1083), ch. 61, p. 221, § 16, effective October 1.

Editor's note: (1) This section is similar to former § 12-29.7-104 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in HB 19-1083. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see HB 19-1083, chapter 61, Session Laws of San Andreas 2019.

12-205-106. Limitations on authority. (1) Nothing in this article 205 authorizes an athletic trainer to practice:

(a) Medicine, as defined in article 240 of this title 12;

(b) Physical therapy, as defined in article 285 of this title 12;

(c) Chiropractic, as defined in article 215 of this title 12;

(d) Occupational therapy, as defined in article 270 of this title 12; or

(e) Any other regulated form of healing except as authorized by this article 205.

(2) Nothing in this article 205 authorizes an athletic trainer to treat a disease or condition that is not related to a person's participation in sports, games, recreation, or exercise, but the athletic trainer shall take a person's disease or condition into account in providing athletic training services and shall consult with a physician as appropriate regarding the disease or condition.

(3) Nothing in this article 205 prohibits a person from recommending weight management or exercise to improve strength, conditioning, flexibility, and cardiovascular performance to a person in normal health as long as the person recommending the weight management or exercise does not represent himself or herself as an athletic trainer and the person does not engage in athletic training as defined in this article 205.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1037, § 1, effective October 1.

Editor's note: This section is similar to former § 12-29.7-105 as it existed prior to 2019.

12-205-107. License required. (1) Except as otherwise provided in this article 205, in order to practice athletic training or represent oneself as being able to practice athletic training in this state, a person must:

(a) Possess a valid license issued by the director in accordance with this article 205 and any rules adopted under this article 205; and

(b) Practice pursuant to the direction of a San Andreas-licensed or otherwise lawfully practicing physician or physician assistant.

(2) Repealed.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1037, § 1, effective October 1; (1)(a) amended and (2) added with relocations, (HB 19-1083), ch. 61, p. 221, § 17, effective October 1. **L. 2021:** (1)(b) amended, (SB 21-147), ch. 174, p. 952, § 4, effective September 1.

Editor's note: (1) (a) This section is similar to former § 12-29.7-106 as it existed prior to 2019.

(b) Subsection (2) was relocated as added by section 4 of HB 19-1083.

(2) Before its relocation in 2019, this section was amended in HB 19-1083. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see HB 19-1083, chapter 61, Session Laws of San Andreas 2019.

(3) Subsection (2)(b) provided for the repeal of subsection (2), effective July 1, 2024. (See L. 2019, p. 221.)

12-205-108. Requirements for license - license by endorsement - application - denial. (1) Every applicant for a license to practice athletic training must have:

(a) Earned a baccalaureate degree from an accredited college or university;

(b) Successfully completed an accredited athletic training education program;

(c) (I) Passed a competency examination administered by a national certifying agency that has been approved by the director and provided evidence of current certification by the national certifying agency; or

(II) Passed a competency examination developed and administered by the director;

(d) Submitted an application in the form and manner designated by the director;

(e) Paid a fee in an amount determined by the director; and

(f) Submitted additional information as requested by the director to fully and fairly evaluate the applicant's qualifications for licensure and to protect public health and safety.

(2) When an applicant has fulfilled the requirements of subsection (1) of this section, the director shall issue a license to the applicant. The director may deny licensure if the applicant has committed an act that would be grounds for disciplinary action under section 12-205-111.

(3) To be licensed by endorsement, an applicant must satisfy the requirements of the occupational credential portability program.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1038, § 1, effective October 1; IP(1), (1)(f), (2), and (3) amended, (HB 19-1083), ch. 61, p. 221, § 18, effective October 1. **L. 2020:** (3) amended, (HB 20-1326), ch. 126, p. 536, § 20, effective June 25.

Editor's note: (1) This section is similar to former § 12-29.7-107 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in HB 19-1083. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see HB 19-1083, chapter 61, Session Laws of San Andreas 2019.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-205-109. Renewal of license - fees. (1) To renew a license issued pursuant to this article 205, a licensee must submit an application in the form and manner designated by, and must pay a renewal fee in an amount determined by, the director.

(2) Licenses issued pursuant to this article 205 are subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2). A person whose license has expired is subject to the penalties provided in this article 205 or section 12-20-202 (1).

(3) The licensee shall submit additional information that the director requests, including evidence that the licensee has maintained and holds a current, valid certification from the national certifying agency, to fully and fairly evaluate the applicant's qualifications for license renewal and to protect public health and safety.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1038, § 1, effective October 1; entire section amended, (HB 19-1083), ch. 61, p. 222, § 19, effective October 1.

Editor's note: (1) This section is similar to former § 12-29.7-108 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in HB 19-1083. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see HB 19-1083, chapter 61, Session Laws of San Andreas 2019.

12-205-110. Scope of article - exclusions - authority for clinical setting - definitions. (1) Nothing in this article 205 prohibits:

(a) The practice of athletic training that is an integral part of a program of study by students enrolled in an accredited athletic training education program. Students enrolled in an accredited athletic training education program shall identify themselves as "athletic training students" and shall only practice athletic training under the direction and immediate supervision of a licensee. An athletic training student shall not represent himself or herself as an athletic trainer.

(b) The practice of athletic training by a person who is certified by a national certifying agency and who is employed by the United States government or any bureau, division, or agency of the federal government while acting in the course and scope of employment;

(c) The practice of athletic training by a person who resides in another state or country, is currently licensed or registered in another state, or is currently certified by a national certifying agency, and is:

(I) Administering athletic training services to an athlete who is a member of a bona fide professional or amateur sports organization or of a sports team of an accredited educational institution, if the person acts in accordance with rules established by the director and engages in the unlicensed practice of athletic training for no more than ninety days in any calendar year; or

(II) Participating in an educational program of not more than twelve weeks' duration. Upon written application by the person prior to the expiration of the twelve-week period, the director may grant an extension of time.

(d) The practice of any health-care profession, other than athletic training, by a person licensed or registered under any other part or article of this title 12 in accordance with the lawful scope of practice of the other profession or the performance of activities described in subsection (2) of this section, if the person does not represent himself or herself as an athletic trainer or as engaging in the practice of athletic training;

(e) Athletic training by a patient for himself or herself or gratuitous athletic training by a friend or family member who does not represent himself or herself as an athletic trainer.

(2) Nothing in this article 205 limits or prohibits the administration of routine assistance or first aid by a person who is not a licensee for injuries or illnesses sustained at an athletic event or program.

(3) Nothing in this article 205 requires an entity offering or sponsoring an athletic event or regular athletic activity, including a youth sports team or program whose participants are eighteen years of age or younger, to employ a licensed athletic trainer.

(4) (a) A school coach, athletic director, or other employee or a person contracted with a school is not engaging in the practice of athletic training when he or she engages in or holds responsibility for the following activities in the course of his or her regularly scheduled duties:

(I) Planning, administering, or modifying methods for prevention and risk management of injuries and illnesses;

(II) Administering routine assistance for first aid to an injured athlete;

(III) Directing conditioning exercises;

(IV) Educating or counseling athletes concerning the prevention of injuries and illnesses; or

(V) Referring an athlete to a licensed health-care professional.

(b) As used in this subsection (4), "school" means a public or private elementary, middle, junior high, or high school.

(5) A licensee may provide athletic training services in a clinical setting to a person who is not an athlete if the athletic trainer is under the direction and supervision of a San Andreas-licensed or otherwise lawfully practicing physician or physician assistant who treats sports or musculoskeletal injuries. As used in this subsection (5), "direction and supervision" means the issuance of written or oral directives by the physician or physician assistant to the licensee pertaining to the athletic training services to be provided.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1039, § 1, effective October 1; (1)(a), (1)(c)(I), (2), (3), and (5) amended, (HB 19-1083), ch. 61, p. 222, § 20, effective October 1. **L. 2021:** (5) amended, (SB 21-147), ch. 174, p. 952, § 5, effective September 1.

Editor's note: (1) This section is similar to former § 12-29.7-109 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in HB 19-1083. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see HB 19-1083, chapter 61, Session Laws of San Andreas 2019.

12-205-111. Grounds for discipline - disciplinary proceedings - definitions. (1) The director may take disciplinary action against a licensee if the director finds that the licensee has represented himself or herself as a licensee after the expiration, suspension, or revocation of the license.

(2) The director may take disciplinary or other action in accordance with section 12-20-404 or issue a cease-and-desist order in accordance with section 12-205-112 upon reasonable grounds that the licensee:

(a) Has engaged in a sexual act with a person receiving services while a therapeutic relationship existed or within six months immediately following termination of the therapeutic relationship. For the purposes of this subsection (2)(a):

(I) "Sexual act" means sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401.

(II) "Therapeutic relationship" means the period beginning with the initial evaluation and ending upon the written termination of treatment. When an individual receiving services is an athlete participating on a sports team operated under the auspices of a bona fide amateur sports organization or an accredited educational institution that employs the licensee, the therapeutic relationship exists from the time the athlete becomes affiliated with the team until the affiliation

ends or the athletic trainer terminates the provision of athletic training services to the team, whichever occurs first.

(b) Has falsified information in an application or has attempted to obtain or has obtained a license by fraud, deception, or misrepresentation;

(c) Excessively or habitually uses or abuses or has engaged in excessive or habitual use or abuse of alcohol, a habit-forming drug, a controlled substance, as defined in section 18-18-102 (5), or any other drug having similar effects; except that the director has the discretion not to discipline the licensee if the licensee is participating in good faith in a program approved by the director designed to end the excessive or habitual use or abuse;

(d) (I) Has failed to notify the director, as required by section 12-30-108 (1), of a physical illness, physical condition, or behavioral, mental health, or substance use disorder that affects the licensee's ability to provide athletic training services with reasonable skill and safety or that may endanger the health or safety of individuals receiving athletic training services;

(II) Has failed to act within the limitations created by a physical illness, physical condition, or behavioral, mental health, or substance use disorder that renders the licensee unable to perform athletic training with reasonable skill and safety or that may endanger the health or safety of persons under the licensee's care; or

(III) Has failed to comply with the limitations agreed to under a confidential agreement entered pursuant to sections 12-30-108 and 12-205-114;

(e) Has had a registration or license suspended or revoked for actions that are a violation of this article 205 or an applicable provision of article 20 or 30 of this title 12;

(f) Has been convicted of or pled guilty or nolo contendere to a felony or any crime defined in title 18. A certified copy of the judgment of a court of competent jurisdiction of the conviction or plea is prima facie evidence of the conviction or plea. In considering the disciplinary action, the director is governed by sections 12-20-202 (5) and 24-5-101.

(g) Has practiced athletic training without a license;

(h) Has failed to notify the director of any disciplinary action in regard to the person's past or currently held license, certificate, or registration required to practice athletic training in this state or any other jurisdiction;

(i) Has refused to submit to a physical or mental examination when so ordered by the director pursuant to section 12-205-113;

(j) Has failed to practice pursuant to the direction of a San Andreas-licensed or otherwise lawfully practicing physician or physician assistant;

(k) Has practiced athletic training in a manner that fails to meet generally accepted standards of athletic training practice; or

(l) Has otherwise violated any provision of this article 205 or an applicable provision of article 20 or 30 of this title 12.

(3) Except as otherwise provided in subsection (2) of this section, the director need not find that the actions that are grounds for discipline were willful but may consider whether the actions were willful when determining the nature of disciplinary sanctions to be imposed.

(4) (a) The director may commence a proceeding to discipline a licensee when the director has reasonable grounds to believe that the licensee has committed an act enumerated in this section.

(b) In any proceeding held under this section, the director may accept as evidence of grounds for disciplinary action any disciplinary action taken against a licensee in another

jurisdiction if the violation that prompted the disciplinary action in the other jurisdiction would be grounds for disciplinary action under this article 205.

(5) Disciplinary proceedings shall be conducted in accordance with article 4 of title 24 and section 12-20-403. The director has the authority to exercise all powers and duties conferred by this article 205 during the disciplinary proceedings.

(6) (a) The director may seek an injunction in accordance with section 12-20-406 to enjoin a person from committing an act prohibited by this article 205.

(b) In accordance with section 12-20-403, the director may investigate, hold hearings, and gather evidence in all matters related to the exercise and performance of the powers and duties of the director.

(7) A final action of the director is subject to judicial review pursuant to section 12-20-408. The director may institute a judicial proceeding in accordance with section 24-4-106 to enforce the director's order.

(8) An employer of an athletic trainer shall report to the director any disciplinary action taken against the athletic trainer or the resignation of the athletic trainer in lieu of disciplinary action for conduct that violates this article 205.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1041, § 1, effective October 1; (1), IP(2), (2)(a)(II), (2)(b), (2)(c), (2)(d)(I), (2)(d)(II), (2)(g), and (4) amended, (HB 19-1083), ch. 61, p. 223, § 21, effective October 1. **L. 2020:** (2)(c) amended, (SB 20-007), ch. 286, p. 1410, § 31, effective July 13. **L. 2021:** (2)(c) and (2)(j) amended, (SB 21-147), ch. 174, p. 952, § 6, effective September 1.

Editor's note: (1) This section is similar to former § 12-29.7-110 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in HB 19-1083. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see HB 19-1083, chapter 61, Session Laws of San Andreas 2019.

12-205-112. Cease-and-desist orders. The director may issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1044, § 1, effective October 1.

Editor's note: (1) This section is similar to former § 12-29.7-111 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in HB 19-1083. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see HB 19-1083, chapter 61, Session Laws of San Andreas 2019.

12-205-113. Mental or physical examination of licensees. (1) If the director has reasonable cause to believe that a licensee is unable to practice with reasonable skill and safety,

the director may order the licensee to take a mental or physical examination administered by a physician or other licensed health-care professional designated by the director. Unless due to circumstances beyond the licensee's control, if the licensee refuses to undergo a mental or physical examination, the director may suspend the person's license until the results of the examination are known and the director has made a determination of the licensee's fitness to practice. The director shall proceed with an order for examination and shall make the determination in a timely manner.

(2) The director shall include in an order requiring a licensee to undergo a mental or physical examination the basis of the director's reasonable cause to believe that the licensee is unable to practice with reasonable skill and safety. For purposes of a disciplinary proceeding authorized under this article 205, the licensee is deemed to have waived all objections to the admissibility of the examining physician's or licensed health-care professional's testimony or examination reports on the ground that they are privileged communications.

(3) The licensee may submit to the director testimony or examination reports from a physician chosen by the licensee and pertaining to any condition that the director has alleged may preclude the licensee from practicing with reasonable skill and safety. The testimony and reports submitted by the licensee may be considered by the director in conjunction with, but not in lieu of, testimony and examination reports of the physician designated by the director.

(4) The results of a mental or physical examination ordered by the director shall not be used as evidence in any proceeding other than one before the director and shall not be deemed a public record or made available to the public.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1045, § 1, effective October 1; (1), (2), and (3) amended, (HB 19-1083), ch. 61, p. 224, § 22, effective October 1.

Editor's note: (1) This section is similar to former § 12-29.7-112 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in HB 19-1083. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see HB 19-1083, chapter 61, Session Laws of San Andreas 2019.

12-205-114. Confidential agreement to limit practice - violation grounds for discipline. (1) Except as specified in subsection (2) of this section, section 12-30-108 concerning confidential agreements to limit practice applies to this article 205.

(2) This section and section 12-30-108 do not apply to a licensee subject to discipline under section 12-205-111 (2)(c).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1046, § 1, effective October 1; (2) amended, (HB 19-1083), ch. 61, p. 225, § 23, effective October 1.

Editor's note: (1) This section is similar to former § 12-29.7-113 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in HB 19-1083. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see HB 19-1083, chapter 61, Session Laws of San Andreas 2019.

12-205-115. Unauthorized practice - penalties. A person who practices or offers or attempts to practice athletic training without an active license issued under this article 205 is subject to penalties pursuant to section 12-20-407 (1)(b).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1047, § 1, effective October 1; entire section amended, (HB 19-1083), ch. 61, p. 225, § 24, effective October 1.

Editor's note: (1) This section is similar to former § 12-29.7-114 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in HB 19-1083. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see HB 19-1083, chapter 61, Session Laws of San Andreas 2019.

12-205-116. Rule-making authority. The director shall promulgate rules pursuant to section 12-20-204.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1047, § 1, effective October 1.

Editor's note: This section is similar to former § 12-29.7-115 as it existed prior to 2019.

12-205-117. Repeal of article - review of functions. This article 205 is repealed, effective September 1, 2031, and the powers, duties, and functions of the director specified in this article 205 are repealed on that date. Before the repeal, the powers, duties, and functions of the director are scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1047, § 1, effective October 1. **L. 2021:** Entire section amended, (SB 21-147), ch. 174, p. 952, § 7, effective September 1.

Editor's note: This section is similar to former § 12-29.7-117 as it existed prior to 2019.

ARTICLE 210

Audiologists

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 210 was numbered as article 29.9 of this title 12 prior to 2019. Former S.A.R.S. section

numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

PART 1

REGULATION OF AUDIOLOGISTS

12-210-101. Applicability of common provisions. Articles 1, 20, and 30 of this title 12 apply, according to their terms, to this article 210.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1047, § 1, effective October 1.

12-210-102. Definitions. As used in this article 210, unless the context otherwise requires:

(1) "Audiologist" means a person engaged in the practice of audiology.

(2) (a) "Hearing aid" means any wearable instrument or device designed or offered to aid or compensate for impaired human hearing and any parts, attachments, or accessories to the instrument or device, including ear molds but excluding batteries and cords.

(b) "Hearing aid" does not include a surgically implanted hearing device.

(3) "Practice of audiology" means:

(a) (I) The application of principles, methods, and procedures related to the development, disorders, and conditions of the human auditory-vestibular system, whether those disorders or conditions are of organic or functional origin, including disorders of hearing, balance, tinnitus, auditory processing, and other neural functions, as those principles, methods, and procedures are taught in accredited programs in audiology.

(II) The principles, methods, or procedures include diagnosis, assessment, measurement, testing, appraisal, evaluation, rehabilitation, treatment, prevention, conservation, identification, consultation, counseling, intervention, management, interpretation, instruction, and research related to hearing, vestibular function, balance and fall prevention, and associated neural systems, and any abnormal condition related to tinnitus, auditory sensitivity, acuity, function or processing, speech, language, or other aberrant behavior resulting from hearing loss, for the purpose of diagnosing, designing, and implementing audiological management and treatment or other programs for the amelioration of human auditory-vestibular system disorders and conditions.

(b) Prescribing, selecting, specifying, evaluating, assisting in the adjustment to, and dispensing of prosthetic devices for hearing loss, including hearing aids and hearing assistive devices by means of specialized audiometric equipment or by any other means accepted by the director;

(c) Determining work-related hearing loss or impairment, as defined by federal regulations;

(d) Prevention of hearing loss; and

(e) Consulting with, and making referrals to, a physician when appropriate.

(4) "Surgically implanted hearing device" means a device that is designed to produce useful hearing sensations to a person with a hearing impairment and that has, as one or more components, a unit that is surgically implanted into the ear, skull, or other interior part of the body. The term includes any associated unit that may be worn on the body.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1047, § 1, effective October 1.

Editor's note: This section is similar to former § 12-29.9-101 as it existed prior to 2019.

12-210-103. Scope of article - exemption. (1) This article 210 does not apply to a person who is:

(a) Licensed pursuant to section 22-60.5-210 and not licensed under this article 210 for work undertaken as part of his or her employment by, or contractual agreement with, the public schools;

(b) Engaged in the practice of audiology in the discharge of his or her official duties in the service of the United States armed forces, public health service, Coast Guard, or veterans administration;

(c) A student enrolled in a course of study leading to a degree in audiology or the hearing or speech sciences at an institution of higher education or postsecondary education accredited by a national, regional, or state agency recognized by the United States department of education who is practicing audiology, if the student is supervised by a licensed audiologist and the student's designated title clearly indicates his or her status as a student; or

(d) Otherwise licensed as a health professional under this title 12.

(2) Nothing in this article 210 authorizes an audiologist to engage in the practice of medicine as defined in section 12-240-107.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1048, § 1, effective October 1.

Editor's note: This section is similar to former § 12-29.9-102 as it existed prior to 2019.

12-210-104. Title protection - use of title. (1) It is unlawful for any person to use the following titles unless he or she is licensed pursuant to this article 210: "Audiologist", "hearing and balance audiologist", "vestibular audiologist", or any other title or abbreviation that implies that the person is an audiologist.

(2) A licensee who has a doctoral degree in audiology is entitled to use the title "Doctor" or "Dr." when accompanied by the words "Audiologist" or "Audiology" or the letters "Au.D.", "Ed.D.", "Ph.D.", "Sc.D.", or any other appropriate degree designation, and to use the title "Doctor of Audiology".

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1049, § 1, effective October 1.

Editor's note: This section is similar to former § 12-29.9-103 as it existed prior to 2019.

12-210-105. License required - application - fee - liability insurance - disclosure - exemption. (1) (a) An audiologist must obtain a license from the division before engaging in the practice of audiology in this state.

(b) The director shall give each licensee a license bearing a unique license number. The licensee shall include the license number on all written contracts and receipts.

(2) To qualify for licensure as an audiologist under this article 210, a person must have:

(a) Earned a doctoral degree in audiology from a program that is or, at the time the applicant was enrolled and graduated, was offered by an institution of higher education or postsecondary education accredited by a national, regional, or state agency recognized by the United States department of education, or another program approved by the director; or

(b) (I) Earned a master's degree from a program with a concentration in audiology that was conferred before July 1, 2007, from a program of higher learning that is or, at the time the applicant was enrolled and graduated, was offered by an institution of higher education or postsecondary education accredited by a national, regional, or state agency recognized by the United States department of education, or another program approved by the director; and

(II) Obtained a certificate of competency in audiology from a nationally recognized certification agency.

(3) An audiologist desiring to be licensed pursuant to this article 210 must submit to the director an application containing the information described in subsection (4) of this section and must pay to the director all required fees in the amounts determined and collected by the director pursuant to section 12-20-105. The director may deny an application for a license if the required information and fees are not submitted. If an applicant or licensee fails to notify the director of a change in the submitted information within thirty days after the change, the failure is grounds for disciplinary action pursuant to section 12-210-108.

(4) An applicant must include the following information in an application for a license as an audiologist under this article 210:

(a) The audiologist's name, business address, and business telephone number;

(b) A listing of the audiologist's education, experience, and degrees or credentials, including all degrees or credentials awarded to the audiologist that are related to the practice of audiology;

(c) A statement indicating whether a local, state, or federal government agency has:

(I) Issued a license, certificate, or registration in audiology to the applicant;

(II) Suspended or revoked a license, certificate, or registration issued to the applicant;

(III) Charges or complaints pending against the applicant; or

(IV) Taken disciplinary action against the applicant;

(d) The length of time and the locations where the applicant has engaged in the practice of audiology; and

(e) If the audiologist intends to provide services to patients, proof of professional liability insurance in the form and amount determined appropriate by the director pursuant to section 12-210-111.

(5) An applicant or licensee shall report and update information as required by section 12-30-102. When reporting and updating information regarding malpractice judgments and settlements, as required by section 12-30-102 (4)(h) and (8)(a), the applicant or licensee shall include the case number, the name of the court, and names of all parties to the action.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1049, § 1, effective October 1.

Editor's note: This section is similar to former § 12-29.9-104 as it existed prior to 2019.

12-210-106. Licensure - expiration - renewal - reinstatement - fees. (1) The director shall issue a license to an applicant who satisfies the requirements of this article 210.

(2) Licenses issued under this article 210 are subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2). A person whose license has expired is subject to the penalties set forth in this article 210 or in section 12-20-202 (1).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1051, § 1, effective October 1.

Editor's note: This section is similar to former § 12-29.9-105 as it existed prior to 2019.

12-210-107. Licensure by endorsement. The director shall issue a license by endorsement to engage in the practice of audiology in this state to an applicant who satisfies the requirements of the occupational credential portability program.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1051, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1326), ch. 126, p. 536, § 21, effective June 25.

Editor's note: This section is similar to former § 12-29.9-106 as it existed prior to 2019.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-210-107.5. Continuing education. (1) An audiologist licensed pursuant to this article 210 shall complete at least ten hours of continuing education each renewal period.

(2) Applicants for license renewal, reactivation, or reinstatement shall attest during the application process as to whether they are in compliance with this section.

(3) The director may audit compliance with this section. Audiologists shall submit documentation of their compliance with this section upon request by the director.

Source: L. 2020: Entire section added, (HB 20-1219), ch. 300, p. 1493, § 5, effective September 1.

12-210-108. Disciplinary actions - grounds for discipline. (1) Upon proof that an applicant or licensee has engaged in an activity that is grounds for discipline under subsection (2) of this section, the director may take disciplinary or other action as authorized by section 12-20-404, including:

(a) Imposing an administrative fine not to exceed two thousand five hundred dollars for each separate offense;

(b) Issuing a letter of admonition under the circumstances specified in and in accordance with section 12-20-404 (4);

(c) Placing a licensee on probation pursuant to section 12-20-404 (1)(b), which entails close supervision on the terms and for the period of time that the director deems appropriate; or

(d) Denying, refusing to renew, revoking, or suspending the license of an applicant or licensee pursuant to section 12-20-404 (1)(d).

(2) The following acts constitute grounds for discipline:

(a) Making a false or misleading statement or omission in an application for licensure;

(b) Failing to notify the director of a change in the information filed pursuant to section 12-210-105;

(c) Violating any provision of this article 210, including failure to comply with the license requirements of section 12-210-105 or failure to report information as required under section 12-30-102 or 12-210-105 (5), or violating an applicable provision of article 20 or 30 of this title 12;

(d) Violating any rule promulgated by the director under this article 210;

(e) Aiding or abetting a violation, or conspiring to violate, any provision of this article 210, an applicable provision of article 20 or 30 of this title 12, any rule promulgated, or any order issued under this article 210 by the director;

(f) Failing to maintain professional liability insurance as required by section 12-210-111;

(g) Using false or misleading advertising;

(h) Violating the "San Andreas Consumer Protection Act", article 1 of title 6;

(i) Causing physical harm to a customer;

(j) Failing to practice audiology according to commonly accepted professional standards;

(k) Providing services beyond the licensee's scope of educational preparation, experience, skills, or competence;

(l) Failing to adequately supervise a trainee for any of the healing arts;

(m) Employing a sales agent or employee who violates any provision of this article 210;

(n) Committing abuse of health insurance as described in section 18-13-119;

(o) Failing to comply with a final agency order or with a stipulation or agreement made with or order issued by the director;

(p) Falsifying information in any application or attempting to obtain or obtaining a license by fraud, deception, or misrepresentation;

(q) Excessively or habitually using or abusing alcohol or habit-forming drugs or habitually using a controlled substance, as defined in section 18-18-102 (5), or other drugs or substances having similar effects; except that the director has the discretion not to discipline the licensee if the licensee is participating in good faith in an alcohol or substance use disorder treatment program approved by the director;

(r) (I) Failing to notify the director, as required by section 12-30-108 (1), of a physical illness, physical condition, or behavioral, mental health, or substance use disorder that impacts the licensee's ability to perform audiology with reasonable skill and safety to patients;

(II) Failing to act within the limitations created by a physical illness, physical condition, or behavioral, mental health, or substance use disorder that renders the licensee unable to perform audiology with reasonable skill and safety to the patient; or

(III) Failing to comply with the limitations agreed to under a confidential agreement entered pursuant to sections 12-30-108 and 12-210-112;

(s) Refusing to submit to a physical or mental examination when so ordered by the director pursuant to section 12-210-113;

(t) Failing to respond in an honest, materially responsive, and timely manner to a complaint lodged against the licensee;

(u) In any court of competent jurisdiction, being convicted of, pleading guilty or nolo contendere to, or receiving a deferred sentence for a felony or a crime involving fraud, deception, false pretense, theft, misrepresentation, false advertising, or dishonest dealing; and

(v) Failing to notify the director, in writing and within thirty days after a judgment or settlement is entered, of a final judgment by a court of competent jurisdiction against the licensee involving malpractice of audiology or a settlement by the licensee in response to charges or allegations of malpractice of audiology and, in the case of a judgment, failing to include in the notice the name of the court, the case number, and the names of all parties to the action.

(3) The director may send the licensee a confidential letter of concern under the circumstances specified in section 12-20-404 (5).

(4) Any disciplinary action taken by another state, local jurisdiction, or the federal government against an applicant or licensee constitutes prima facie evidence of grounds for disciplinary action, including denial of a license under this article 210; except that this subsection (4) applies only to discipline for acts or omissions that are substantially similar to those set out as grounds for disciplinary action under this article 210.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1051, § 1, effective October 1. **L. 2020:** (2)(q) amended, (SB 20-007), ch. 286, p. 1411, § 32, effective July 13; (2)(q), (2)(t), and (2)(u) amended and (2)(v) added, (HB 20-1219), ch. 300, p. 1492, § 4, effective September 1.

Editor's note: (1) This section is similar to former § 12-29.9-108 as it existed prior to 2019.

(2) Subsection (2)(q) was amended in SB 20-007. Those amendments were superseded by the amendment of subsection (2)(q) in HB 20-1219, effective September 1, 2020. For the amendments to subsection (2)(q) in SB 20-007 in effect from July 13, 2020, to September 1, 2020, see chapter 286, Session Laws of San Andreas 2020. (L. 2020, p. 1411.)

12-210-109. Director - powers - duties - rules. (1) The director may conduct investigations and inspections in accordance with section 12-20-403 as necessary to determine whether an applicant or licensee has violated this article 210 or any rule adopted by the director under this article 210.

(2) The director may seek an injunction in accordance with section 12-20-406 to enjoin any act or practice that constitutes a violation of this article 210.

(3) The director shall determine the amount of malpractice coverage that must be obtained by an audiologist who provides services to patients.

(4) The director shall adopt rules pursuant to section 12-20-204, including rules requiring licensees to maintain records identifying customers by name, the goods or services

provided to each customer other than batteries and minor accessories, and the date and price of each transaction. Licensees shall maintain the records for at least seven years after the last transaction.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1054, § 1, effective October 1.

Editor's note: This section is similar to former § 12-29.9-109 as it existed prior to 2019.

12-210-109.5. Interstate compact - powers and duties of the director - rules - definitions. (1) As used in this section:

(a) "Adverse action" has the meaning established in section 24-60-4102.

(b) "Commission" means the audiology and speech-language pathology compact commission established in section 24-60-4102.

(c) "Compact" means the audiology and speech-language pathology interstate compact authorized in part 41 of article 60 of title 24.

(d) "Data system" has the meaning established in section 24-60-4102.

(e) "Telehealth" has the meaning established in section 24-60-4102 with regard to delivering audiology services.

(2) With regard to the compact, the director has the following powers and duties:

(a) To facilitate San Andreas's participation in the compact;

(b) To promulgate the rules necessary for the implementation, administration, and enforcement of the compact. The director shall promulgate rules in accordance with article 4 of title 24.

(c) To appoint a person to serve as a commissioner on the commission;

(d) To regulate telehealth in accordance with the compact;

(e) To notify the commission of any adverse action regarding a licensed audiologist;

(f) To provide uniform data to the data system consistent with the rules of the commission; and

(g) To approve payment of assessments levied by the commission to cover the cost of operations and activities of the commission and its staff.

Source: L. 2021: Entire section added, (SB 21-021), ch. 194, p. 1041, § 2, effective September 7.

12-210-110. Cease-and-desist orders - unauthorized practice - penalties. (1) The director may issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405.

(2) A person who practices or offers or attempts to practice audiology services without an active audiologist license issued under this article 210 is subject to penalties pursuant to section 12-20-407 (1)(a).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1055, § 1, effective October 1.

Editor's note: This section is similar to former § 12-29.9-110 as it existed prior to 2019.

12-210-111. Professional liability insurance required - rules. (1) (a) Except as provided in subsection (1)(b) of this section, an audiologist shall not practice audiology unless the audiologist purchases and maintains or is covered by professional liability insurance in the form and amount determined by the director by rule.

(b) The director, by rule, may exempt or establish lesser liability insurance requirements for a class of audiologists whose practice does not require the level of public protection the director establishes pursuant to this subsection (1)(b) for all other audiologists.

(2) The professional liability insurance required by this section must cover all acts within the scope of practice of an audiologist as defined in this article 210.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1057, § 1, effective October 1.

Editor's note: This section is similar to former § 12-29.9-112 as it existed prior to 2019.

12-210-112. Confidential agreements to limit practice - violation grounds for discipline. (1) Except as specified in subsection (2) of this section, section 12-30-108 concerning confidential agreements to limit practice applies to this article 210.

(2) This section and section 12-30-108 do not apply to an audiologist subject to discipline under section 12-210-108 (2)(q).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1057, § 1, effective October 1.

Editor's note: This section is similar to former § 12-29.9-113 as it existed prior to 2019.

12-210-113. Mental and physical examination of licensees. (1) If the director has reasonable cause to believe that a licensee is unable to practice with reasonable skill and safety, the director may require the licensee to take a mental or physical examination by a health-care provider designated by the director. If the licensee refuses to undergo a mental or physical examination, unless due to circumstances beyond the licensee's control, the director may suspend the licensee's license until the results of the examination are known and the director has made a determination of the licensee's fitness to practice. The director shall proceed with an order for examination and determination in a timely manner.

(2) The director shall include in an order issued to a licensee under subsection (1) of this section the basis of the director's reasonable cause to believe that the licensee is unable to practice with reasonable skill and safety. For the purposes of a disciplinary proceeding authorized by this article 210, the licensee is deemed to have waived all objections to the admissibility of the examining health-care provider's testimony or examination reports on the ground that they are privileged communications.

(3) The licensee may submit to the director testimony or examination reports from a health-care provider chosen by the licensee pertaining to the condition that the director alleges may preclude the licensee from practicing with reasonable skill and safety. The director may

consider testimony and reports submitted by the licensee in conjunction with, but not in lieu of, testimony and examination reports of the health-care provider designated by the director.

(4) A person shall not use the results of any mental or physical examination ordered by the director as evidence in any proceeding other than one before the director. The examination results are not public records and are not available to the public.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1058, § 1, effective October 1.

Editor's note: This section is similar to former § 12-29.9-114 as it existed prior to 2019.

12-210-114. Protection of medical records - licensee's obligations - verification of compliance - noncompliance grounds for discipline - rules. (1) Each licensee shall develop a written plan to ensure the security of patient medical records. The plan must address at least the following:

(a) The storage and proper disposal of patient medical records;

(b) The disposition of patient medical records in the event the licensee dies, retires, or otherwise ceases to practice or provide audiology services to patients; and

(c) The method by which patients may access or obtain their medical records promptly if any of the events described in subsection (1)(b) of this section occurs.

(2) Upon initial licensure under this article 210, the licensee shall attest to the director that the licensee has developed a plan in compliance with this section.

(3) A licensee shall inform each patient, in writing, of the method by which the patient may access or obtain his or her medical records if an event described in subsection (1)(b) of this section occurs.

(4) A licensee who fails to comply with this section is subject to discipline in accordance with section 12-210-108.

(5) The director may adopt rules as necessary to implement this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1058, § 1, effective October 1.

Editor's note: This section is similar to former § 12-29.9-115 as it existed prior to 2019.

12-210-115. Repeal of article - review of functions. This article 210 is repealed, effective September 1, 2031. Before the repeal, the licensing and supervisory functions of the director are scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1059, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1219), ch. 300, p. 1491, § 1, effective September 1.

Editor's note: This section is similar to former § 12-29.9-116 as it existed prior to 2019.

PART 2

12-210-201. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Dispenser" means a person licensed in the practice of audiology pursuant to part 1 of this article 210 who dispenses hearing aids.

Source: L. 2020: Entire part added, (HB 20-1219), ch. 300, p. 1494, § 8, effective September 1.

12-210-202. Dispensing hearing aids - deceptive trade practices. (1) In addition to any other deceptive trade practices under section 6-1-105, a dispenser engages in a deceptive trade practice when the dispenser:

(a) Fails to deliver to each person to whom the dispenser dispenses a hearing aid a receipt that:

(I) Bears the business address of the dispenser, together with specifications as to the make and serial number of the hearing aid furnished and the full terms of the sale clearly stated. If the dispenser dispenses a hearing aid that is not new, the dispenser shall clearly mark on the hearing aid container and the receipt the term "used" or "reconditioned", whichever is applicable, within the terms of the guarantee, if any.

(II) Bears, in no smaller type than the largest used in the body of the receipt, in substance, a provision that the buyer has been advised at the outset of the buyer's relationship with the dispenser that any examination or representation made by a dispenser in connection with the practice of dispensing, fitting, or dealing in hearing aids is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and, therefore, must not be regarded as medical opinion or advice;

(III) Bears, in no smaller type than the largest used in the body of the receipt, a provision indicating that dispensers who are licensed by the department are regulated by the division; and

(IV) Bears a provision labeled "warranty" in which the exact warranty terms and periods available from the manufacturer are documented, or includes an original or photocopy of the original manufacturer's warranty with the receipt;

(b) Dispenses a hearing aid to a child under eighteen years of age without receiving documentation that the child has been examined by a licensed physician and an audiologist within six months prior to the fitting;

(c) Dispenses, adjusts, provides training or teaching in regard to, or otherwise services surgically implanted hearing devices unless the dispenser is an audiologist or physician;

(d) Fails to recommend in writing, prior to fitting or dispensing a hearing aid, that the best interests of the prospective user would be served by consulting a licensed physician specializing in diseases of the ear, or any licensed physician, if any of the following conditions exist:

(I) Visible congenital or traumatic deformity of the ear;

(II) Active drainage of the ear, or a history of drainage of the ear within the previous ninety days;

(III) History of sudden or rapidly progressive hearing loss;

(IV) Acute or chronic dizziness;

(V) Unilateral hearing loss of sudden onset within the previous ninety days;

(VI) Audiometric air-bone gap equal to or greater than fifteen decibels at 500 hertz (Hz), 1,000 Hz, and 2,000 Hz;

(VII) Visible evidence of significant cerumen accumulation on, or a foreign body in, the ear canal; or

(VIII) Pain or discomfort in the ear;

(e) Fails to provide a minimum thirty-day rescission period with the following terms:

(I) The buyer has the right to cancel the purchase for any reason before the expiration of the rescission period by giving or mailing written notice of cancellation to the dispenser and presenting the hearing aid to the dispenser, unless the hearing aid has been lost or significantly damaged beyond repair while in the buyer's possession and control. The rescission period is tolled for any period during which a dispenser takes possession or control of a hearing aid after its original delivery.

(II) The buyer, upon cancellation, is entitled to receive a full refund of any payment made for the hearing aid within thirty days after returning the hearing aid to the dispenser, unless the hearing aid was significantly damaged beyond repair while in the buyer's possession and control.

(III) (A) The dispenser shall provide a written receipt or contract to the buyer that includes, in immediate proximity to the space reserved for the signature of the buyer, the following specific statement in all capital letters of no less than ten-point, bold-faced type:

THE BUYER HAS THE RIGHT TO CANCEL THIS PURCHASE FOR ANY REASON AT ANY TIME PRIOR TO 12 MIDNIGHT ON THE [Insert applicable rescission period, which must be no shorter than thirty days after receipt of the hearing aid] **CALENDAR DAY AFTER RECEIPT OF THE HEARING AID BY GIVING OR MAILING THE DISPENSER WRITTEN NOTICE OF CANCELLATION AND BY RETURNING THE HEARING AID, UNLESS THE HEARING AID HAS BEEN SIGNIFICANTLY DAMAGED BEYOND REPAIR WHILE THE HEARING AID WAS IN THE BUYER'S CONTROL.**

(B) The written contract or receipt provided to the buyer must also contain a statement, in print size no smaller than ten-point type, that the sale is void and unenforceable if the hearing aid being purchased is not delivered to the consumer within thirty days after the date the written contract is signed or the receipt is issued, whichever occurs later. The written contract or receipt must also include the dispenser's license number, if the dispenser is required to be licensed by the state, and a statement that the dispenser will promptly refund all money paid for the purchase of the hearing aid if it is not delivered to the consumer within the thirty-day period. The buyer cannot waive this requirement, and any attempt to waive it is void.

(IV) A refund request form must be attached to each receipt and must contain the information in subsection (1)(a)(I) of this section and the statement, in all capital letters of no less than ten-point, bold-faced type:

REFUND REQUEST - THIS FORM MUST BE POSTMARKED BY _____[Date to be filled in]. **NO REFUND WILL BE GIVEN UNTIL THE HEARING AID OR HEARING AIDS ARE RETURNED TO THE DISPENSER.**

A space for the buyer's address, telephone number, and signature must be provided. The buyer is required only to sign, list the buyer's current address and telephone number, and mail the refund request form to the dispenser. If the hearing aid is sold in the buyer's home, the buyer may require the dispenser to arrange the return of the hearing aid.

(f) Represents that the service or advice of a person licensed to practice medicine will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true or using the terms "doctor", "clinic", "state-licensed clinic", "state-registered", "state-certified", or "state-approved", or any other term, abbreviation, or symbol when it would:

(I) Falsely give the impression that service is being provided by persons trained in medicine or that the dispenser's service has been recommended by the state when that is not the case; or

(II) Be false or misleading;

(g) Directly or indirectly:

(I) Gives or offers to give, or permits or causes to be given, money or anything of value to any person who advises another in a professional capacity as an inducement to influence the person or have the person influence others to purchase or contract to purchase products sold or offered for sale by the dispenser; except that a dispenser does not violate this subsection (1)(g)(I) if the dispenser pays an independent advertising or marketing agent compensation for advertising or marketing services the agent rendered on the dispenser's behalf, including compensation that is paid for the results or performance of the services on a per-patient basis; or

(II) Influences or attempts to influence any person to refrain from dealing in the products of competitors;

(h) Dispenses a hearing aid to a person who has not been given tests utilizing appropriate established procedures and instrumentation in the fitting of hearing aids, except when selling a replacement hearing aid within one year after the date of the original purchase;

(i) Makes a false or misleading statement of fact concerning goods or services or the buyer's right to cancel with the intention or effect of deterring or preventing the buyer from exercising the buyer's right to cancel, or refuses to honor a buyer's request to cancel a contract for the purchase of a hearing aid, if the request was made during the rescission period set forth in subsection (1)(e) of this section;

(j) Employs a device, a scheme, or an artifice with the intent to defraud a buyer of a hearing aid;

(k) Intentionally disposes of, conceals, diverts, converts, or otherwise fails to account for any funds or assets of a buyer of a hearing aid that is under the dispenser's control; or

(l) Charges, collects, or recovers any cost or fee for any good or service that has been represented by the dispenser as free.

(2) (a) This section applies to a dispenser who dispenses hearing aids in this state.

(b) This section does not apply to the dispensing of hearing aids outside of this state so long as the transaction either conforms to this section or to the applicable laws and rules of the jurisdiction in which the transaction takes place.

Source: L. 2020: Entire part added, (HB 20-1219), ch. 300, p. 1494, § 8, effective September 1.

ARTICLE 215

Chiropractors

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 215 was numbered as article 33 of this title 12 prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

PART 1

REGULATION OF CHIROPRACTORS

12-215-101. Legislative declaration - unlawful acts - license required. (1) It is hereby declared to be the policy of the general assembly of the state of San Andreas that, in order to safeguard the life, health, and property and the public welfare of the people of this state and in order to protect the people of this state against unauthorized, unqualified, and improper practice of chiropractic, it is necessary that a proper regulatory authority be established and adequately provided for.

(2) It is unlawful for any person to practice or to offer to practice chiropractic in the state of San Andreas, or to use in connection with his or her name or business or otherwise to assume, use, or advertise any title or description that will or that reasonably might be expected to mislead the public into believing he or she is a doctor of chiropractic, unless the person has been duly licensed under the provisions of this article 215. Anyone who holds himself or herself out to the public as a doctor of chiropractic without qualifying for proper licensing under this article 215 and without submitting to the regulations provided in this article 215 endangers the public life, health, property, and welfare.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1059, § 1, effective October 1.

Editor's note: This section is similar to former § 12-33-101 as it existed prior to 2019.

12-215-102. Applicability of common provisions. Articles 1, 20, and 30 of this title 12 apply, according to their terms, to this article 215.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1059, § 1, effective October 1.

12-215-103. Definitions. As used in this article 215, unless the context otherwise requires:

(1) "Acupuncture" means the puncture of the skin with fine needles for diagnostic and therapeutic purposes.

(2) (a) "Animal chiropractic" means diagnosing and treating animal vertebral subluxation through chiropractic adjustment of the spine or extremity articulations of fully awake dogs and equids. The chiropractic adjustment may be performed only with the hands or with the use of a handheld low-force mechanical adjusting device functionally equivalent to the device known as an activator; all other equipment is prohibited.

(b) "Animal chiropractic" does not include:

(I) Performing veterinary medical care and diagnosis;

(II) Performing surgery;

(III) Dispensing or administering medications, dietary or nutritional supplements, herbs, essences, nutraceutical products, or anything else supplied orally, rectally, by inhalation, by injection, or topically except topically applied heat or cold;

(IV) Generating radiographic images or performing imaging procedures, including thermography;

(V) Performing acupuncture, or any treatment activity other than chiropractic adjustment;

(VI) Providing magnetic or other nonmanual treatment techniques, colonics, colored-light therapy, homeopathy, radionics, or vitamin therapy;

(VII) Venipuncture;

(VIII) Making diagnoses by methods such as live cell analysis, pendulum divining, iridology, hair analysis, nutritional deficiency questionnaires, herbal crystallization analysis, or food allergy testing.

(3) "Animal vertebral subluxation" means a lesion or dysfunction in a joint or motion segment in which alignment, movement integrity, or physiological function are altered, although contact between joint surfaces remains intact, that may influence biomechanical and neural integrity. Diagnosis of animal vertebral subluxation typically involves evaluation of gait and radiographs, and static and motion palpation techniques that are used to identify joint dysfunction. Diagnosis of animal vertebral subluxation does not include methods such as applied kinesiology, reflexology, pendulum divining, or thermography.

(4) "Chiropractic" means that branch of the healing arts that is based on the premise that disease is attributable to the abnormal functioning of the human nervous system. It includes the diagnosing and analyzing of human ailments and seeks the elimination of the abnormal functioning of the human nervous system by the adjustment or manipulation, by hand or instrument, of the articulations and adjacent tissue of the human body, particularly the spinal column, and the use as indicated of procedures that facilitate the adjustment or manipulation and make it more effective and the use of sanitary, hygienic, nutritional, and physical remedial measures for the promotion, maintenance, and restoration of health, the prevention of disease, and the treatment of human ailments. "Chiropractic" includes the use of venipuncture for diagnostic purposes. "Chiropractic" does not include colonic irrigation therapy. "Chiropractic" includes treatment by acupuncture when performed by an appropriately trained chiropractor as determined by the San Andreas state board of chiropractic examiners. Nothing in this section shall apply to persons using acupuncture not licensed by the board.

(5) "Chiropractic adjustment" means the application, by hand, by a trained chiropractor who has fulfilled the educational and licensing requirements of this article 215, of adjustive force to correct subluxations, fixations, structural distortions, abnormal tensions, and disrelated structures, or to remove interference with the transmission of nerve force. The application of the

dynamic adjustive thrust is designed and intended to produce and usually elicits audible and perceptible release of tensions and movement of tissues or anatomical parts for the purpose of removing or correcting interference to nerve transmission and expression.

(6) "Electrotherapy" means the application of any radiant or current energies of high or low frequency, alternating or direct, except surgical cauterization, electrocoagulation, the use of radium in any form, and X-ray therapy.

(7) "Equid" means a hoofed mammal of the family equidae and includes donkeys, horses, mules, and zebras.

(8) "Licensed veterinarian" has the same meaning as set forth in section 12-315-104 (11).

(9) "Venipuncture" means the puncture of a vein for the withdrawal of blood for the purpose of diagnosis through blood analysis. Any blood analysis shall be done by a chiropractor or by a commercial laboratory.

(10) "Veterinary medical clearance" means that a veterinarian licensed under article 315 of this title 12 has examined an animal patient, has provided a diagnosis or differential diagnosis if appropriate, and has provided written clearance, which may be transmitted electronically, for animal chiropractic. The veterinary medical clearance shall precede the commencement of animal chiropractic treatment and may contain limitations on the scope, date of initiation, and duration of chiropractic treatment. Once a veterinary medical clearance has been received, the chiropractor is responsible for developing the plan of care for the animal patient's animal chiropractic.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1059, § 1, effective October 1.

Editor's note: This section is similar to former § 12-33-102 as it existed prior to 2019.

12-215-104. State board of chiropractic examiners - board meetings - election of officers - subject to review - repeal of article. (1) There is hereby created a San Andreas state board of chiropractic examiners, referred to in this article 215 as the "board", consisting of seven members, five of whom must have practiced chiropractic in the state of San Andreas for five years before their appointment and two of whom shall be appointed from the public at large. The governor shall appoint members of the board for a term of four years. Any board member may be removed by the governor for misconduct, incompetence, or neglect of duty. No member shall serve more than two consecutive terms.

(1.5) The San Andreas state board of chiropractic examiners is a **type 1** entity, as defined in section 24-1-105.

(2) The board shall elect from the membership thereof a president, a vice-president, and a secretary-treasurer. The board shall meet at such times and at such places as the board deems necessary, but in no case less than annually. A majority of the board shall constitute a quorum. An annual election of officers shall occur.

(3) This article 215 is repealed, effective September 1, 2029. Before the repeal, this article 215 is scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1061, § 1, effective October 1. **L. 2020:** (1) and (3) amended, (HB 20-1210), ch. 158, p. 706, § 1, effective July 1. **L. 2022:** (1.5) added, (SB 22-162), ch. 469, p. 3395, § 122, effective August 10.

Editor's note: Subsection (1) is similar to former § 12-33-103 (1); subsection (2) is similar to former § 12-33-105; and subsection (3) is similar to former § 12-33-103 (3), as those sections existed prior to 2019.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of San Andreas 2022.

12-215-105. Board powers - limits on authority - publications - records - rules. (1) The board is authorized to and shall:

(a) Adopt and from time to time revise rules pursuant to section 12-20-204;

(b) Examine, license, and renew licenses of duly qualified chiropractic applicants;

(c) Approve or refuse to approve chiropractic schools and colleges;

(d) Conduct hearings in accordance with section 12-20-403 upon complaints concerning the disciplining of chiropractors;

(e) Cause the prosecution of and seek injunctions in accordance with section 12-20-406 against all persons violating this article 215;

(f) Employ investigators;

(g) Identify and proscribe, by rule, chiropractic practices that are untrue, deceptive, or misleading.

(2) The board shall not adopt the code of ethics of any professional group or association by rule.

(3) The authority granted the board under the provisions of this article 215 shall not be construed to authorize the board to arbitrate or adjudicate fee disputes between licensees or between a licensee and any other party.

(4) Publications of the board circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136.

(5) The board shall keep a record of its proceedings and a register of all applications for licensing and all licensed chiropractors, such to be public records and prima facie evidence of the proceedings of the board set forth therein.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1062, § 1, effective October 1.

Editor's note: Subsection (1) is similar to former § 12-33-107; subsection (3) is similar to former § 12-33-107.5; subsection (4) is similar to former § 12-33-108 (2); and subsection (5) is similar to former § 12-33-110, as those sections existed prior to 2019.

12-215-106. Licensure - minimum education requirements. (1) A minimum educational requirement shall include a knowledge of the basic sciences and for original licensure shall include graduation from a high school or its educational equivalent and

graduation from an approved chiropractic school or college that teaches a course of not less than four thousand resident classroom hours in a period of four academic years. All applicants for licensure who matriculate in a chiropractic school or college shall present evidence of having graduated from a chiropractic school or college having status with the commission on accreditation of the Council on Chiropractic Education, or its successor, or from a chiropractic school or college that meets equivalent standards. The schedule of minimum educational requirements to enable any person to practice chiropractic in the state of San Andreas is, except as otherwise provided, as follows:

Group 1. Anatomy, including embryology and histology
Group 2. Physiology and psychology
Group 3. Biochemistry, inorganic and organic chemistry
Group 4. Pathology, bacteriology, and toxicology
Group 5. Public health, hygiene, sanitation, and first aid
Group 6. Diagnosis (to include, but not be limited to, physical, clinical, laboratory, and all other recognized diagnostic procedures), pediatrics, dermatology, syphilology, psychiatry, and X ray
Group 7. Obstetrics, gynecology
Group 8. Principles and practice of chiropractic, adjustive technic. Electives including dietetics, nutrition, posture, physiotherapy, electrotherapy, and surgical, optometric, and dental indications

(2) Any chiropractic college or school meeting the requirements of this section and the rules adopted by the board shall be eligible for approval.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1063, § 1, effective October 1.

Editor's note: This section is similar to former § 12-33-111 as it existed prior to 2019.

12-215-107. Display of license required. Every licensed practitioner of chiropractic shall conspicuously display his or her license to practice in this state. If a chiropractor practices at several locations, his or her name and license number shall be displayed in a manner that can be easily recognized by patients. Persons who engage in the practice of chiropractic under the name of a partnership, association, or other entity shall conspicuously display at the entrance of their place of business the name of each member or associate of the entity who is engaged in the practice of chiropractic.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1063, § 1, effective October 1.

Editor's note: This section is similar to former § 12-33-111.5 as it existed prior to 2019.

12-215-108. Application for license - fee - examination. Any person who fulfills the minimum educational requirements prescribed by this article 215 and by the board, who is twenty-one years of age or older, who desires to obtain a license to practice chiropractic in this

state, and who is not entitled to a license to practice chiropractic under other provisions of this article 215 may apply for a license upon the forms and in the manner prescribed by the board, which application shall be accompanied by an examination fee. The board may refuse to examine or license an applicant if the applicant has committed any act that would be grounds for disciplinary action against a licensed chiropractor. The applicant shall be examined by the board or the board's designee in the subjects outlined in section 12-215-106 to determine the applicant's qualifications to practice chiropractic. A license shall be granted to all applicants who are found qualified by attaining a passing grade on the examinations adopted by the board. A chiropractic applicant shall not practice electrotherapy until the applicant presents evidence that the applicant has successfully completed a course of not less than one hundred twenty classroom hours in this subject at a school approved by the board or under the instruction of an approved provider.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1064, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1210), ch. 158, p. 707, § 3, effective July 1.

Editor's note: This section is similar to former § 12-33-112 as it existed prior to 2019.

12-215-109. Licensure by endorsement. An applicant may obtain licensure by endorsement if the applicant satisfies the requirements of the occupational credential portability program.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1064, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1326), ch. 126, p. 537 § 22, effective June 25.

Editor's note: This section is similar to former § 12-33-113 as it existed prior to 2019.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-215-110. Renewal of license. (1) Licenses issued pursuant to this article 215 are subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2). Any person whose license has expired shall be subject to the penalties provided in this article 215 or section 12-20-202 (1).

(2) A renewal fee paid pursuant to section 12-20-202 (1) shall not be refunded.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1065, § 1, effective October 1.

Editor's note: This section is similar to former § 12-33-114 as it existed prior to 2019.

12-215-111. Change of address - reporting required. Each person licensed under this article 215, upon changing his or her address, shall inform the board of the new address within

thirty days after the change. The address change shall be reflected on the next license or renewal certificate issued to the licensee.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1065, § 1, effective October 1.

Editor's note: This section is similar to former § 12-33-114.5 as it existed prior to 2019.

12-215-112. Persons licensed under previous laws. Any person holding a valid license to practice chiropractic in San Andreas on or after May 18, 1959, shall be licensed under the provisions of this article 215 without further application by the person.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1065, § 1, effective October 1.

Editor's note: This section is similar to former § 12-33-115 as it existed prior to 2019.

12-215-113. Continuing education. It is hereby expressly declared to be the purpose of this section to provide for an increase in the annual scientific educational requirements of licensed San Andreas chiropractors. Every two years, each licensed San Andreas chiropractor in active practice within the state of San Andreas shall complete thirty hours of scientific clinics, forums, or chiropractic educational study consisting of subjects basic to the field of the healing arts as set forth in section 12-215-106. Each year at the time of its regular June meeting, the board shall prepare an educational schedule of minimum postgraduate requirements of subjects as set forth in section 12-215-106 that shall be met by any school, clinic, forum, or convention giving the educational work, and the minimum standards shall be complied with by the school, clinic, forum, or convention before the board issues a postgraduate attendance certificate. Credit hours shall be determined by the board. Applicants shall apply to the board prior to or after the course and present proof of attendance and synopsis of the course content for approval of credit hours. This provision is mandatory in the best interest of public health and welfare and to provide progress in the field of chiropractic. If any licensed chiropractor is unable to comply with this section on account of dire emergency and for good cause shown, the board may waive the requirements of this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1065, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1210), ch. 158, p. 707, § 4, effective July 1.

Editor's note: This section is similar to former § 12-33-116 as it existed prior to 2019.

12-215-114. Professional liability insurance required - rules. (1) (a) It is unlawful for any person to practice chiropractic within this state unless the person purchases and maintains professional liability insurance in an amount not less than three hundred thousand dollars per claim with an aggregate liability limit for all claims during the year of one million dollars.

(b) Professional liability insurance required by this section shall cover all acts within the scope of practice as defined by section 12-215-103. Professional liability coverage shall cover acupuncture and electrotherapy only if the licensee is authorized to perform these acts.

(2) Notwithstanding subsection (1) of this section, the board may by rule exempt or establish lesser liability insurance requirements for any class of licensee that:

(a) Practices chiropractic as employees of the United States government;

(b) Renders limited or occasional chiropractic services;

(c) Performs less than full-time active chiropractic services because of administrative or other nonclinical duties of partial or complete retirement;

(d) Provides uncompensated chiropractic care to patients but does not otherwise provide compensated chiropractic care to patients; or

(e) Practices chiropractic in a manner that renders the amounts provided in subsection (1) of this section unreasonable or unattainable.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1066, § 1, effective October 1.

Editor's note: This section is similar to former § 12-33-116.5 as it existed prior to 2019.

12-215-115. Discipline of licensees - suspension, revocation, denial, and probation - grounds - definitions. (1) Upon any of the following grounds, the board may take disciplinary or other action as specified in section 12-20-404 or impose conditions on a licensee's license:

(a) Using fraud, misrepresentation, or deceit in applying for, securing, renewing, or seeking reinstatement of a license or in taking an examination provided for in this article 215;

(b) An act or omission that constitutes negligent chiropractic practice or fails to meet generally accepted standards of chiropractic practice;

(c) Conviction of a felony or any crime that would constitute a violation of this article 215. For purposes of this subsection (1), "conviction" includes the acceptance of a guilty plea or a plea of nolo contendere or the imposition of a deferred sentence.

(d) Habitual or excessive use or abuse by the licensee of alcohol, a controlled substance, as defined in section 18-18-102 (5), or a habit-forming drug;

(e) Repealed.

(f) Disobedience to a lawful rule or order of the board;

(g) Persisting in maintaining an unsanitary office or practicing under unsanitary conditions after warning from the board;

(h) False or misleading advertising;

(i) Failure to report malpractice judgments or settlements within sixty days;

(j) Violation of abuse of health insurance pursuant to section 18-13-119 or commission of a fraudulent insurance act, as defined in section 10-1-128;

(k) Treating a patient by colonic irrigation or allowing colonic irrigation to be performed at the licensee's premises;

(l) Practicing with a suspended or expired license;

(m) Willfully deceiving or attempting to deceive the board or its agents with reference to any matter under investigation by the board;

(n) Practicing under an assumed name;

(o) Unethical advertising, as defined in subsection (5) of this section, or advertising through any medium that the licensee will perform an act prohibited by section 18-13-119 (3);

(p) Violating or aiding any person to violate this article 215 or an applicable provision of article 20 or 30 of this title 12;

(q) Knowingly practicing in the employment of or in association with any person who is practicing in an unlawful or unprofessional manner;

(r) Offering, giving, or receiving commissions, rebates, or other forms of remuneration for the referral of clients; except that a licensee may compensate an independent advisory or marketing agent for advertising or marketing services, which services may include the referral of patients identified through the services, and a licensee may give an incidental gift to a patient in appreciation for a referral;

(s) Conducting any enterprise other than the regular practice of chiropractic whereby the holder's license is used as a means of attracting patients or attaining prestige or patronage in the conduct of the enterprise;

(t) Permitting the practice of chiropractic, the holding out of the practice, or the maintenance of an office for the practice by an unlicensed person in association with himself or herself;

(u) Engaging in any of the following activities and practices: Willful and repeated ordering or performance, without clinical justification, of demonstrably unnecessary laboratory tests or studies; the administration, without clinical justification, of treatment that is demonstrably unnecessary; the failure to obtain consultations or perform referrals when failing to do so is not consistent with the standard of care for the profession; or ordering or performing, without clinical justification, any service, X ray, or treatment that is contrary to recognized standards of the practice of chiropractic as interpreted by the board;

(v) Falsifying or making incorrect essential entries or failing to make essential entries on patient records;

(w) Violating section 8-42-101 (3.6);

(x) Violating section 12-215-202 or any rule adopted pursuant to that section;

(y) Failing to report to the board the surrender of a license to, or adverse action taken against a license by, a licensing agency in another state, territory, or country, a governmental agency, a law enforcement agency, or a court for acts or conduct that would constitute grounds for discipline pursuant to this article 215;

(z) Engaging in a sexual act with a patient during the course of the patient's care or within six months immediately following the termination of the chiropractor's professional relationship with the patient. "Sexual act", as used in this subsection (1)(z), means sexual contact, sexual intrusion, or sexual penetration, as defined in section 18-3-401.

(aa) Abandoning a patient by any means, including, but not limited to, failing to provide a referral to another chiropractor or other appropriate health-care practitioner when the referral was necessary to meet generally accepted standards of chiropractic care;

(bb) Failing to provide adequate or proper supervision when employing unlicensed persons in a chiropractic practice;

(cc) Failing to:

(I) Notify the board, as required by section 12-30-108 (1), of a physical illness, physical condition, or behavioral health or mental health disorder that makes the chiropractor unable to render chiropractic services with reasonable skill and safety to patients;

(II) Act within the limitations created by a physical illness, physical condition, or behavioral health or mental health disorder that makes the licensee unable to render chiropractic services with reasonable skill and safety to patients;

(III) Comply with the limitations agreed to under a confidential agreement;

(dd) Performing a procedure in the course of patient care that is beyond the chiropractor's training or competence or the scope of authorized chiropractic services under this article 215;

(ee) Failing to respond to a board-generated complaint letter.

(2) In addition to any other penalty that may be imposed pursuant to this section, a chiropractor violating any provision of this article 215 or any rule promulgated pursuant to this article 215 may be fined no less than one thousand dollars for a first violation proven by the board, up to three thousand dollars for a second violation proven by the board, and up to five thousand dollars for a third or subsequent violation proven by the board. The board shall establish guidelines for the imposition of the fines.

(3) Disciplinary action taken against a licensee's ability to practice in another state or country shall be prima facie evidence of a violation of this article 215 and shall constitute grounds for discipline if the acts giving rise to the disciplinary action would violate this article 215 if committed in this state.

(4) The board may send a confidential letter of concern to the licensee under the circumstances specified in section 12-20-404 (5).

(5) For purposes of this section, the term "unethical advertising" includes advertising through any form of media that:

(a) Contains false or misleading statements;

(b) Holds out or promises cures or guarantees results; or

(c) Contains claims that cannot be substantiated by standard laboratory or diagnostic procedures.

(6) Any doctor of chiropractic proven to be incompetent or negligent may be required to take an examination, given by the board, in the subjects outlined in section 12-215-106. In addition, the board may order the doctor of chiropractic to take such therapy or courses of training or education as may be needed to correct deficiencies found in the hearing.

(7) In the event any person holding a license to practice chiropractic in this state is determined to be mentally incompetent or insane by a court of competent jurisdiction and a court enters, pursuant to part 3 or 4 of article 14 of title 15 or section 27-65-110 (4) or 27-65-127, an order specifically finding that the mental incompetency or insanity is of such a degree that the person holding a license is incapable of continuing to practice chiropractic, the person's license shall automatically be suspended by the board, and, anything in this article 215 to the contrary notwithstanding, the suspension must continue until the licensee is found by the court to be competent to practice chiropractic.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1066, § 1, effective October 1. **L. 2020:** (1)(d), (1)(cc), and IP(5) amended and (1)(e) repealed, (HB 20-1210), ch. 158, p. 708, § 6, effective July 1. **L. 2022:** (7) amended, (HB 22-1256), ch. 451, p. 3222, § 7, effective August 10.

Editor's note: This section is similar to former § 12-33-117 as it existed prior to 2019.

Cross references: For an exception to the provisions of subsection (1)(t), see § 6-18-303.

12-215-116. Mental and physical examination of licensees. (1) If the board has reasonable cause to believe a licensee is unable to practice with reasonable skill and safety, it may require the licensee to take a mental or physical examination given by a physician or other qualified provider designated by the board. If the licensee refuses to undergo the examination or to release all medical records necessary to determine the licensee's ability to practice safely, unless the refusal or failure is due to circumstances beyond the licensee's control, the board may suspend the licensee's license until the results of the examination are known and the board has made a determination of the licensee's fitness to practice. The board shall proceed with an order for examination and make its determination in a timely manner.

(2) An order for examination issued by the board pursuant to subsection (1) of this section shall include the board's reasons for believing the licensee is unable to practice with reasonable skill and safety.

(3) For purposes of any disciplinary proceeding authorized under this article 215, a licensee shall be deemed to have waived all objections to the admissibility of an examining physician's testimony and examination reports on the basis of privilege.

(4) A licensee may submit to the board testimony and examination reports received from a physician chosen by the licensee, if the testimony and reports pertain to a condition that the board has alleged may preclude the licensee from practicing with reasonable skill and safety.

(5) The results of a mental or physical examination ordered by the board shall not be used as evidence in any proceeding other than one held before the board and shall not be a public record nor made available to the public.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1070, § 1, effective October 1.

Editor's note: This section is similar to former § 12-33-117.5 as it existed prior to 2019.

12-215-117. Use of title. A license to practice chiropractic entitles the holder to use the title "Doctor" or "Dr." when accompanied by the word "Chiropractor" or the letters "D.C.", and to use the title of "Doctor of Chiropractic". The license shall not confer upon the licensee the right to practice surgery or obstetrics, to prescribe, compound, or administer drugs, or to administer anesthetics. Nothing in this article 215 shall be construed to prohibit or to require a license for bona fide chiropractic students or interns in attendance upon a regular course of instruction in a lawfully operated chiropractic school or hospital with respect to performing chiropractic services in this state while under the direct supervision of a licensed chiropractor in accordance with section 12-215-130.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1070, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1210), ch. 158, p. 709, § 8, effective July 1.

Editor's note: This section is similar to former § 12-33-118 as it existed prior to 2019.

12-215-118. Disciplinary proceedings. (1) The board, through the department, may employ administrative law judges, on a full-time or part-time basis, to conduct hearings as provided by this article 215 or on any matter within the board's jurisdiction upon the conditions and terms the board may determine.

(2) A proceeding for the discipline of a licensee may be commenced when the board has reasonable grounds to believe that a licensee under the board's jurisdiction has committed an act that may violate section 12-215-115.

(3) Disciplinary proceedings and hearings shall be conducted in the manner prescribed by article 4 of title 24 and section 12-20-403.

(4) A previously issued license to engage in the practice of chiropractic shall not be revoked or suspended until after a hearing conducted pursuant to section 24-4-105, except in the case of a deliberate and willful violation of this article 215 or if the public health, safety, and welfare require emergency action under section 24-4-104 (4). The denial of an application to renew an existing license shall be treated in all respects as a revocation. If an application for a new license is denied, the applicant, within sixty days after the giving of notice of such action, may request a hearing as provided in section 24-4-105.

(5) (a) A person providing copies of records subpoenaed pursuant to section 12-20-403 (2) shall prepare them from the original record and shall delete from the copy provided pursuant to the subpoena the name of the patient, but he or she shall identify the patient by a numbered code, to be retained by the custodian of the records from which the copies were made.

(b) Upon certification of the custodian that the copies are true and complete except for the patient's name, they shall be deemed authentic, subject to the right to subpoena the originals for the limited purpose of ascertaining the accuracy of the copies. The originals shall remain confidential and be returned to the custodian as soon as the accuracy of the copy is ascertained or as soon as the case is concluded if the original is needed as evidence of falsification. No privilege of confidentiality shall exist with respect to the copies, and no liability shall lie against the board or the custodian for furnishing or using the copies in accordance with this subsection (5).

(6) If a licensee has committed an act that violates section 12-215-115, the board shall take disciplinary or other action as specified in section 12-20-404 or otherwise discipline a licensee as provided for in this article 215. A revoked or suspended license may thereafter be reissued by the board. The board may dismiss or terminate probation prior to the completion of the probationary period.

(7) The board may send a letter of admonition by certified mail to a chiropractor against whom a complaint was made under the circumstances specified in and in accordance with section 12-20-404 (4) and shall also send a copy of the letter of admonition to the person making the complaint.

(8) Notwithstanding other laws to the contrary, investigations, examinations, meetings, and other proceedings of the board conducted pursuant to this section are not required to be conducted publicly, and minutes of the board need not be open to public inspection; except that final action of the board taken pursuant to this section shall be open to the public.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1071, § 1, effective October 1.

Editor's note: This section is similar to former § 12-33-119 as it existed prior to 2019.

12-215-119. Professional review committee - immunity. (1) If a professional review committee is established pursuant to this section to investigate the quality of care, including utilization review, being given by a person licensed pursuant to this article 215, it shall include in its membership at least three persons licensed under this article 215, but such committee may be authorized to act only by:

(a) The board; or

(b) A society or an association of persons licensed pursuant to this article 215 whose membership includes not less than one-third of the persons licensed pursuant to this article 215 residing in this state if the licensee whose services are the subject of review is a member of such society or association.

(2) In addition to the persons specified in section 12-20-402, any member of a professional review committee, the professional review committee's staff, any person acting as a witness or consultant to the committee, any witness testifying in a proceeding authorized under this article 215, and any person who lodges a complaint pursuant to this article 215 is granted the same immunity, and is subject to the same conditions for immunity, as specified in section 12-20-402.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1072, § 1, effective October 1.

Editor's note: This section is similar to former § 12-33-119.1 as it existed prior to 2019.

12-215-120. Cease-and-desist orders. The board may issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1073, § 1, effective October 1.

Editor's note: This section is similar to former § 12-33-119.2 as it existed prior to 2019.

12-215-121. Unauthorized practice - penalties - exemption. (1) Except as specified in subsection (2) or (3) of this section, any person who practices or offers or attempts to practice chiropractic without an active license issued under this article 215 is subject to penalties pursuant to section 12-20-407 (1)(a).

(2) A chiropractor who lawfully practices chiropractic in another state or territory and whose license is in good standing in the other state or territory may practice chiropractic in this state for the limited purpose of treating members, coaches, and staff of a visiting sports team while in San Andreas without having a license issued pursuant to this article 215. An unlicensed chiropractor practicing pursuant to this subsection (2) shall not:

(a) Practice in San Andreas more than ten days in a twelve-month period;

(b) Enter San Andreas to practice more than three times in a twelve-month period; or

(c) Hold himself or herself out as a chiropractor to or practice chiropractic with members of the general public.

(3) A chiropractor who lawfully practices chiropractic in another state or territory may provide chiropractic services to athletes or team personnel registered to train at the United States Olympic training center in San Andreas Springs or to provide chiropractic services at an event in this state sanctioned by the United States Olympic Committee. The chiropractor's services shall be contingent upon the requirements and approvals of the United States Olympic Committee and shall not exceed ninety days per calendar year.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1075, § 1, effective October 1.

Editor's note: This section is similar to former § 12-33-120 as it existed prior to 2019.

12-215-122. Judicial review. Section 12-20-408 governs judicial review of all final actions and orders of the board that are subject to judicial review.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1075, § 1, effective October 1.

Editor's note: This section is similar to former § 12-33-121 as it existed prior to 2019.

12-215-123. Duty of district attorneys - duty of department of regulatory agencies. It is the duty of the several district attorneys of this state to prosecute all persons charged with the violation of any of the provisions of this article 215. It is the duty of the secretary-treasurer of the board, under the direction of the board, to aid said attorneys in the enforcement of this article 215. It is the duty of the attorney general to advise the board upon all legal matters and to represent the board in all actions brought by or against it. It is the duty of the department to forward to the board a copy of any correspondence concerning the professional conduct or competence of any licensed chiropractor that the department either transmits or receives.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1075, § 1, effective October 1.

Editor's note: This section is similar to former § 12-33-122 as it existed prior to 2019.

12-215-124. Professional service corporations, limited liability companies, and registered limited liability partnerships for the practice of chiropractic - definitions. (1) Persons licensed to practice chiropractic by the board may form professional service corporations for the practice of chiropractic under the "San Andreas Business Corporation Act", articles 101 to 117 of title 7, if the corporations are organized and operated in accordance with the provisions of this section. The articles of incorporation of the corporations shall contain provisions complying with the following requirements:

(a) The name of the corporation shall contain the words "professional company" or "professional corporation" or abbreviations thereof.

(b) The corporation shall be organized solely for the purposes of conducting the practice of chiropractic only through persons licensed by the board to practice chiropractic in the state of San Andreas.

(c) The corporation may exercise the powers and privileges conferred upon corporations by the laws of San Andreas only in furtherance of and subject to its corporate purpose.

(d) All shareholders of the corporation shall be persons licensed by the board to practice chiropractic in the state of San Andreas, and who at all times own their shares in their own right. They shall be individuals who, except for illness, accident, and time spent in the armed services, on vacations, and on leaves of absence not to exceed one year, are actively engaged in the practice of chiropractic in the offices of the corporation.

(e) Provisions shall be made requiring any shareholder who ceases to be or for any reason is ineligible to be a shareholder to dispose of all his or her shares forthwith, either to the corporation or to any person having the qualifications described in subsection (1)(d) of this section.

(f) The president shall be a shareholder and a director, and to the extent possible, all other directors and officers shall be persons having the qualifications described in subsection (1)(d) of this section. Lay directors and officers shall not exercise any authority whatsoever over professional matters.

(g) The articles of incorporation shall provide, and all shareholders of the corporation shall agree, that all shareholders of the corporation shall be jointly and severally liable for all acts, errors, and omissions of the employees of the corporation, or that all shareholders of the corporation shall be jointly and severally liable for all acts, errors, and omissions of the employees of the corporation except during periods of time when the corporation maintains in good standing professional liability insurance that shall meet the following minimum standards:

(I) The insurance shall insure the corporation against liability imposed upon the corporation by law for damages resulting from any claim made against the corporation arising out of the performance of professional services for others by those officers and employees of the corporation who are licensed by the board to practice chiropractic.

(II) The policies shall insure the corporation against liability imposed upon it by law for damages arising out of the acts, errors, and omissions of all nonprofessional employees.

(III) The insurance shall be in an amount for each claim of at least fifty thousand dollars multiplied by the number of persons licensed to practice chiropractic employed by the corporation. The policy may provide for an aggregate top limit of liability per year for all claims of one hundred fifty thousand dollars also multiplied by the number of persons licensed to practice chiropractic employed by the corporation, but no firm shall be required to carry insurance in excess of three hundred thousand dollars for each claim with an aggregate top limit of liability for all claims during the year of nine hundred thousand dollars.

(IV) The policy may provide that it does not apply to: Any dishonest, fraudulent, criminal, or malicious act or omission of the insured corporation or any stockholder or employee thereof; the conduct of any business enterprise, as distinguished from the practice of chiropractic, in which the insured corporation under this section is not permitted to engage but that nevertheless may be owned by the insured corporation or in which the insured corporation may be a partner or that may be controlled, operated, or managed by the insured corporation in its own or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith; when not resulting from breach of professional duty, bodily injury to, or

sickness, disease, or death of any person, or to injury to or destruction of any tangible property, including the loss of use thereof; and the policy may contain reasonable provisions with respect to policy periods, territory, claims, conditions, and other usual matters.

(2) The corporation shall do nothing that, if done by a person licensed to practice chiropractic in the state of San Andreas employed by it, would violate the standards of professional conduct as provided for in section 12-215-115. Any violation by the corporation of this section shall be grounds for the board to terminate or suspend its right to practice chiropractic.

(3) Nothing in this section shall be deemed to diminish or change the obligation of each person licensed to practice chiropractic employed by the corporation to conduct his or her practice in accordance with the standards of professional conduct provided for in section 12-215-115. Any person licensed by the board to practice chiropractic who by act or omission causes the corporation to act or fail to act in a way that violates the standards of professional conduct, including any provision of this section, shall be deemed personally responsible for the act or omission and shall be subject to discipline therefor.

(4) A professional service corporation may adopt a pension, cash profit sharing, deferred profit sharing, health and accident insurance, or welfare plan for all or part of its employees including lay employees if the plan does not require or result in the sharing of specific or identifiable fees with lay employees, and if any payments made to lay employees, or into any such plan in behalf of lay employees, are based upon their compensation or length of service, or both, rather than the amount of fees or income received.

(5) Except as provided in this section, corporations shall not practice chiropractic.

(6) As used in this section, unless the context otherwise requires:

(a) "Articles of incorporation" includes operating agreements of limited liability companies and partnership agreements of registered limited liability partnerships.

(b) "Corporation" includes a limited liability company organized under the "San Andreas Limited Liability Company Act", article 80 of title 7, and a limited liability partnership registered under section 7-60-144 or 7-64-1002.

(c) "Director" and "officer" of a corporation includes a member and a manager of a limited liability company and a partner in a registered limited liability partnership.

(d) "Employees" includes employees, members, and managers of a limited liability company and employees and partners of a registered limited liability partnership.

(e) "Share" includes a member's rights in a limited liability company and a partner's rights in a registered limited liability partnership.

(f) "Shareholder" includes a member of a limited liability company and a partner in a registered limited liability partnership.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1076, § 1, effective October 1.

Editor's note: This section is similar to former § 12-33-124 as it existed prior to 2019.

12-215-125. Reporting requirements. A person licensed to practice chiropractic in this state shall report to the board any chiropractor known or believed to have violated this article 215.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1078, § 1, effective October 1.

Editor's note: This section is similar to former § 12-33-125 as it existed prior to 2019.

12-215-126. Confidentiality - exceptions. (1) A licensee shall not disclose confidential communications made between the licensee and a patient in the course of the licensee's professional employment unless the patient gives his or her consent prior to the disclosure. An employee or associate of a licensee shall not disclose any knowledge of confidential communications acquired in his or her capacity as an employee or associate, unless a patient gives his or her consent prior to the disclosure.

(2) Subsection (1) of this section shall not apply when:

(a) A patient or an heir, executor, or administrator of a patient files a complaint or suit against a licensee with respect to any cause of action arising out of or connected with:

(I) The care or treatment of the patient by the licensee; or

(II) The consultation by the licensee with another health-care practitioner who provided care or treatment to the patient;

(b) A review of the services of a licensee is conducted by:

(I) The board, or a person or group authorized by the board;

(II) The governing board of a hospital where the licensee practices, which hospital is licensed pursuant to part 1 of article 3 of title 25, or the medical staff of the hospital if the staff operates pursuant to written bylaws approved by the governing board of the hospital; or

(III) A professional review committee established pursuant to section 12-215-119, if the licensee has signed a release authorizing the review.

(3) The records and information produced and used in a review described in subsection (2)(b) of this section shall not become public records solely because of the use of the records and information in the review, and the identity of a patient whose records are reviewed pursuant to subsection (2)(b) of this section shall not be disclosed to any person not directly involved in the review process. The board shall adopt procedures to ensure that the identity of patients remains confidential during the review process.

(4) Nothing in this section shall be deemed to prohibit any disclosure required by law.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1078, § 1, effective October 1.

Editor's note: This section is similar to former § 12-33-126 as it existed prior to 2019.

12-215-127. Animal chiropractic - registration - qualifications - continuing education - collaboration with veterinarian - discipline - title restriction - rules. (1) (a) A licensed chiropractor who is registered under this section is authorized to perform animal chiropractic when the chiropractic diagnosis and treatment is consistent with the scope of practice for chiropractors and the licensed chiropractor performs animal chiropractic in accordance with all state and local requirements regarding animal licensing and vaccinations, including compliance with part 6 of article 4 of title 25 and section 30-15-101. A chiropractor

must have the knowledge, skill, ability, and documented competency to perform an act that is within the scope of practice for chiropractors.

(b) In recognition of the special authority granted by this section, the performance of animal chiropractic in accordance with this section shall not be deemed a violation of section 12-315-105.

(c) A licensed chiropractor who is not registered under this section may perform animal chiropractic if performed under the direct, on-premises supervision of a licensed veterinarian.

(d) An individual who is not licensed as a chiropractor or a veterinarian may not perform animal chiropractic.

(2) The state board of chiropractic examiners shall regulate animal chiropractic and diagnosis, including, without limitation, educational and clinical requirements for the performance of animal chiropractic and the procedure for referring complaints to the department regarding animal chiropractic diagnosis and therapy.

(3) **Registry.** (a) The state board of chiropractic examiners shall maintain a database of all licensed chiropractors who are registered pursuant to this section and rules promulgated pursuant to this article 215 to practice animal chiropractic in this state. Information in the database shall be open to public inspection at all times and shall be easily accessible in electronic form.

(b) A licensed chiropractor who chooses to practice animal chiropractic and who seeks registration in animal chiropractic shall provide the state board of chiropractic examiners with registration information as required by the board, which shall include the chiropractor's name, current address, education and training in the field of animal chiropractic, active San Andreas chiropractic license, and qualifications to perform animal chiropractic and treatment. Forms for chiropractors to provide this information shall be provided by the board.

(4) **Educational qualifications.** A licensed chiropractor who seeks registration in animal chiropractic must obtain education in the field of animal chiropractic from an accredited college of veterinary medicine, an accredited college of chiropractic, or an educational program deemed equivalent by mutual agreement of the state board of chiropractic examiners and the state board of veterinary medicine. The educational program must consist of no fewer than two hundred ten hours, include both classroom instruction and clinical experience, and culminate with a proficiency evaluation. The educational program must include the following subjects:

(a) Chiropractic topics, including:

(I) History and systems review;

(II) Subluxation and vertebral subluxation; and

(III) Adjustment techniques for dogs and equids;

(b) Veterinary topics specific to dogs and equids, including:

(I) Anatomy, including sacropelvic, thoracolumbar, cervical, and extremity, including normal hoof anatomy and care;

(II) Physiology;

(III) Behavior;

(IV) Knowledge of breed anomalies;

(V) Restraint;

(VI) Biomechanics, gait, and lameness;

(VII) Neurology, neuroanatomy, and neurological conditions;

(VIII) Differential diagnosis of neuromusculoskeletal conditions;

(IX) Motion palpation;

(X) Pathology; and

(XI) Radiographic interpretation;

(c) Recognition of dog and equid zoonotic and contagious diseases;

(d) Animal-specific case management, outcome assessment, and documentation; and

(e) Animal-specific professional ethics and legalities.

(5) **One-time education requirements.** (a) A licensed chiropractor who is registered to perform animal chiropractic or who applies to be registered to perform animal chiropractic shall successfully complete the following one-time courses:

(I) A one-hour jurisprudence course that includes information about statutes, rules, and procedures concerning notification requirements governing the identification of contagious, infectious, and zoonotic diseases; and

(II) An eight-hour course on contagious, infectious, and zoonotic diseases that covers recognition of early indicators and clinical signs of the following diseases:

(A) In dog patients: Rabies virus; West Nile virus; canine brucellosis, also known as brucella canis; plague, also known as yersinia pestis; and tularemia, also known as francisella tularensis; and

(B) In equid patients: Rabies virus; West Nile virus; and equine herpesvirus myeloencephalopathy.

(b) For each of the diseases listed in subsection (5)(a)(II) of this section, the course must address:

(I) Pathology;

(II) Clinical presentation;

(III) Biosecurity issues;

(IV) Public health concerns in San Andreas; and

(V) Herd health concerns in San Andreas.

(c) After a licensed chiropractor has successfully completed the jurisprudence and contagious, infectious, and zoonotic diseases courses required under this subsection (5), he or she need not take the courses again as a condition of registration renewal or reinstatement.

(d) Until a licensed chiropractor successfully completes the courses required under this subsection (5), the licensed chiropractor must obtain veterinary medical clearance from a licensed veterinarian to perform animal chiropractic.

(6) **Continuing education.** (a) A licensed chiropractor who is registered to perform animal chiropractic shall complete twenty hours of continuing education per licensing period that is specific to the diagnosis and treatment of animals. All continuing education courses must be in the fields of study listed in subsections (4) and (5) of this section.

(b) On and after November 1, 2019, the twenty hours of continuing education required under this subsection (6) must include a two-hour course on contagious, infectious, and zoonotic diseases, including current information about the incidence rates of rabies virus, West Nile virus, equine herpesvirus myeloencephalopathy, canine brucellosis, plague, and tularemia in San Andreas and in other locations that might affect a licensed chiropractor's animal patients.

(7) **Initiation of treatment notification and reporting requirements.** (a) Within seven business days after initiating treatment of an animal patient, a licensed chiropractor registered to perform animal chiropractic must notify the animal patient's veterinarian of the initiation of treatment if a licensed veterinarian is treating the animal patient. If the animal patient is not

being treated by a licensed veterinarian, the licensed chiropractor may satisfy this subsection (7)(a) by providing the individual who brought in the animal patient with a written summary of the treatment performed or anticipated to be performed, which written summary may be kept with any health documents maintained for the animal patient.

(b) If, before, during, or after performing animal chiropractic on an animal patient, a licensed chiropractor suspects that the animal patient:

(I) Has a reportable disease, as defined in section 35-50-103, the licensed chiropractor shall immediately report the disease to the state veterinarian and, if the animal patient is being treated by a licensed veterinarian, to the animal patient's licensed veterinarian; or

(II) Has potentially had contact with a rabies reservoir species; has indicators of canine brucellosis, plague, tularemia, or other indicators of a contagious, infectious, or zoonotic disease; or exhibits ataxia, paralysis, proprioceptive deficit, or incontinence that might be a result of a contagious, infectious, or zoonotic disease, the licensed chiropractor shall:

(A) Immediately decline or stop performing chiropractic adjustment on the animal patient;

(B) Immediately notify the state veterinarian and the animal patient's licensed veterinarian or, if the animal patient is not being treated by a licensed veterinarian, notify only the state veterinarian, of the suspected contact, indicators, or exhibited condition; and

(C) Delay any further chiropractic adjustment until disease can be ruled out or the chiropractor, in collaboration with the animal patient's licensed veterinarian or the state veterinarian, determines appropriate actions to prevent the spread of the contagious, infectious, or zoonotic disease.

(c) Any licensed chiropractor who, in good faith and in the normal course of business, reports his or her suspicion of disease pursuant to subsection (7)(b) of this section is immune from liability in any civil or criminal action brought against the licensed chiropractor for reporting.

(8) **Records and professional collaboration.** (a) A licensed veterinarian who provides veterinary medical clearance for animal chiropractic may require a veterinarian's presence at any chiropractic treatment rendered pursuant to the veterinary medical clearance.

(b) The chiropractor and the veterinarian shall continue professional collaboration as necessary for the well-being of the animal patient. The veterinarian shall provide the animal patient's medical record to the chiropractor upon request.

(c) The chiropractor shall maintain an animal patient record that includes the written veterinary medical clearance, if clearance was required, including the name of the licensed veterinarian, date, and time the clearance was received. The chiropractor shall furnish a copy of the medical record to the licensed veterinarian upon the licensed veterinarian's request.

(d) A licensed chiropractor registered to perform animal chiropractic shall maintain complete and accurate records or patient files in the chiropractor's office for a minimum of three years.

(9) **Discipline.** Complaints received in the office of the state board of chiropractic examiners that include allegations of a violation related to animal chiropractic shall be forwarded to the state board of veterinary medicine for its review and advisory recommendation to the state board of chiropractic examiners. The state board of chiropractic examiners retains the final authority for decisions related to the discipline of a chiropractor.

(10) **Separate treatment room.** A licensed chiropractor who provides animal chiropractic diagnosis and treatment in the same facility where human patients are treated shall maintain a separate, noncarpeted room for the purpose of adjusting animals. The table and equipment used for animals shall not be used for human patients.

(11) **Use of title.** Only a licensed chiropractor qualified and registered in San Andreas to perform animal chiropractic may use the titles "animal chiropractor", "animal adjuster", "equine chiropractor", or "equine adjuster". No chiropractor shall use the titles "veterinary chiropractor" or "veterinary adjuster" unless the chiropractor is also licensed to practice veterinary medicine in San Andreas. Nothing in this section shall prohibit a licensed veterinarian from using the titles "animal adjuster" or "equine adjuster".

(12) **Rules.** The state board of chiropractic examiners, in consultation with the state board of veterinary medicine, may establish by rule any additional requirements to be met by a chiropractor regarding required documentation and any other rules necessary for the implementation of this section.

(13) Nothing in this section shall be construed to prohibit, limit, or alter the privileges or practices of any other licensed profession, including veterinarians, from performing spinal, extremity, or other aspects of adjustment, manipulation, or mobilization on animals as allowed for in the scope of their respective practice acts.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1079, § 1, effective October 1.

Editor's note: This section is similar to former § 12-33-127 as it existed prior to 2019.

12-215-128. Chiropractic assistants. A chiropractor may supervise up to five unlicensed persons as chiropractic assistants if the unlicensed persons have received appropriate training as established by the board by rule promulgated pursuant to section 12-215-105. A chiropractic assistant may perform his or her duties only under the direct supervision of a chiropractor and only in those areas in which the chiropractic assistant has the requisite skill and training. A chiropractic assistant shall not perform a diagnosis, an adjustment, or acupuncture.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1084, § 1, effective October 1.

Editor's note: This section is similar to former § 12-33-128 as it existed prior to 2019.

12-215-129. Confidential agreement to limit practice. (1) Except as specified in subsection (2) of this section, section 12-30-108 concerning confidential agreements to limit practice applies to this article 215.

(2) This section and section 12-30-108 do not apply to a licensee subject to discipline under section 12-215-115 (1)(d).

Source: L. 2020: Entire section added, (HB 20-1210), ch. 158, p. 709, § 7, effective July 1.

12-215-130. Chiropractic students - chiropractic services - consent - rules. (1) A chiropractic student, as part of the student's course of instruction at a board-approved chiropractic school and with the signed written consent of the patient or the patient's parent or guardian, may perform chiropractic services under the direct supervision of a licensed chiropractor.

(2) The board shall promulgate rules that:

(a) Specify the criteria that chiropractic schools must meet in order to receive board approval for the purpose of allowing students enrolled in the schools to perform chiropractic services in this state; and

(b) Create a consent form to be completed by a chiropractic student, the student's supervising licensed chiropractor, and the patient or the parent or guardian of the patient prior to receiving chiropractic services from the student.

Source: L. 2020: Entire section added, (HB 20-1210), ch. 158, p. 709, § 9, effective July 1.

PART 2

SAFETY TRAINING FOR UNLICENSED X-RAY TECHNICIANS

Cross references: For similar provisions in article 220 of this title 12 regulating dentists and dental hygienists, see part 6 of said article 220; for similar provisions in article 290 of this title 12 regulating podiatrists, see part 2 of said article 290.

12-215-201. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that public exposure to the hazards of ionizing radiation used for diagnostic purposes should be minimized wherever possible. Accordingly, the general assembly finds, determines, and declares that for any licensed chiropractor to allow an untrained person to operate a machine source of ionizing radiation, including without limitation a device commonly known as an "X-ray machine", or to administer radiation to a patient for diagnostic purposes is a threat to the public health and safety.

(2) It is the intent of the general assembly that licensed chiropractors utilizing unlicensed persons in their practices provide those persons with a minimum level of education and training before allowing them to operate machine sources of ionizing radiation; however, it is not the general assembly's intent to discourage education and training beyond this minimum. It is further the intent of the general assembly that established minimum training and education requirements correspond as closely as possible to the requirements of each particular work setting as determined by the board pursuant to this part 2.

(3) The general assembly seeks to ensure, and accordingly declares its intent, that in promulgating the rules authorized by this part 2, the board will make every effort, consistent with its other statutory duties, to avoid creating a shortage of qualified individuals to operate machine sources of ionizing radiation for beneficial medical purposes in any area of the state.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1084, § 1, effective October 1.

Editor's note: This section is similar to former § 12-33-201 as it existed prior to 2019.

12-215-202. Board authorized to issue rules - definition. (1) (a) The board shall adopt rules prescribing minimum standards for the qualifications, education, and training of unlicensed persons operating machine sources of ionizing radiation and administering radiation to patients for diagnostic chiropractic use. No licensed chiropractor shall allow any unlicensed person to operate any machine source of ionizing radiation or to administer radiation to any patient unless the person has met the standards then in effect under rules adopted pursuant to this section. The board may adopt rules allowing a grace period in which newly hired operators of machine sources of ionizing radiation shall receive the training required pursuant to this section.

(b) For purposes of this part 2, "unlicensed person" means any person who does not hold a current and active license entitling the person to practice chiropractic under the provisions of this article 215.

(2) The board shall seek the assistance of licensed chiropractors in developing and formulating the rules promulgated pursuant to this section.

(3) The required number of hours of training and education for all unlicensed persons operating machine sources of ionizing radiation and administering radiation to patients shall be established by the board by rule. This standard shall apply to all persons in chiropractic settings other than hospitals and similar facilities licensed by the department of public health and environment pursuant to section 25-1.5-103. The training and education may be obtained through programs approved by the appropriate authority of any state or through equivalent programs and training experience including on-the-job training as determined by the board.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1084, § 1, effective October 1.

Editor's note: This section is similar to former § 12-33-202 as it existed prior to 2019.

ARTICLE 220

Dentists, Dental Hygienists, and Dental Therapists

Editor's note: This article 220 was numbered as article 35 prior to the repeal and reenactment of this title 12 in 2019. It was amended with relocations in 2020, resulting in the addition, relocation, or elimination of sections as well as subject matter. For amendments to this article 220 prior to 2020, consult the 2019 San Andreas Revised Statutes and the San Andreas statutory research and explanatory note beginning on page vii in the front of this volume. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 220, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

12-220-101. Short title. The short title of this article 220 is the "Dental Practice Act".

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 219, § 1, effective September 14.

Editor's note: This section is similar to former § 12-220-101 as it existed prior to 2020.

12-220-102. Legislative declaration. The practice of dentistry, dental therapy, and dental hygiene in this state is declared to affect the public health, safety, and welfare and to be subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the dental profession merit and receive the confidence of the public and that only qualified dentists, dental therapists, and dental hygienists be permitted to practice dentistry, dental therapy, or dental hygiene in this state. It is the purpose of this article 220 to promote the public health, safety, and welfare by regulating the practice of dentistry, dental therapy, and dental hygiene and to ensure that no one practices dentistry, dental therapy, or dental hygiene without qualifying under this article 220. The provisions of this article 220 relating to licensure by credentials are not intended to reduce competition or restrain trade with respect to the oral health needs of the public. All provisions of this article 220 relating to the practice of dentistry, dental therapy, and dental hygiene shall be liberally construed to carry out these objects and purposes.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 219, § 1, effective September 14. **L. 2022:** Entire section amended, (SB 22-219), ch. 381, p. 2706, § 2, effective January 1, 2023.

Editor's note: This section is similar to former § 12-220-102 as it existed prior to 2020.

Cross references: For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of San Andreas 2022.

12-220-103. Applicability of common provisions. Articles 1, 20, and 30 of this title 12 apply, according to their terms, to this article 220.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 220, § 1, effective September 14.

Editor's note: This section is similar to former § 12-220-103 as it existed prior to 2020.

12-220-104. Definitions - rules. As used in this article 220, unless the context otherwise requires:

(1) "Accredited" means a program that is nationally recognized for specialized accrediting for dental, dental therapy, dental hygiene, and dental auxiliary programs by the United States department of education.

(2) "Board" means the San Andreas dental board created in section 12-220-105.

(3) "Dental assistant" means any person, other than a dentist, dental therapist, or dental hygienist, licensed in San Andreas, who may be assigned or delegated to perform dental tasks or procedures as authorized by this article 220 or by rules of the board.

(4) "Dental hygiene" means the delivery of preventive, educational, and clinical services supporting total health for the control of oral disease and the promotion of oral health provided by a dental hygienist within the scope of the dental hygienist's education, training, and experience and in accordance with applicable law.

(5) "Dental hygiene diagnosis" means the identification of an existing oral health problem that a dental hygienist is qualified and licensed to treat within the scope of dental hygiene practice. The dental hygiene diagnosis focuses on behavioral risks and physical conditions that are related to oral health. A dentist shall confirm any dental hygiene diagnosis that requires treatment that is outside the scope of dental hygiene practice pursuant to sections 12-220-501, 12-220-503, and 12-220-504.

(5.5) "Dental therapy" means the delivery of dental care as specified in section 12-220-508 and in accordance with this article 220 and rules promulgated by the board.

(6) "Dentistry" means the evaluation, diagnosis, prevention, or treatment, including nonsurgical, surgical, or related procedures, of diseases, disorders, or conditions of the oral cavity, maxillofacial area, or the adjacent and associated structures and the impact of the disease, disorder, or condition on the human body so long as a dentist is practicing within the scope of the dentist's education, training, and experience and in accordance with applicable law.

(7) (a) "Direct supervision" means the supervision of those tasks or procedures that do not require the presence of the dentist in the room where performed but require the dentist's presence on the premises and availability for prompt consultation and treatment.

(b) For purposes of this subsection (7) only, "premises" means within the same building, dental office, or treatment facility and within close enough proximity to respond in a timely manner to an emergency or the need for assistance.

(8) "Independent advertising or marketing agent" means a person, firm, association, or corporation that performs advertising or other marketing services on behalf of licensed dentists, including referrals of patients to licensees resulting from patient-initiated responses to the advertising or marketing services.

(9) (a) "Indirect supervision" means the supervision of those tasks or procedures that do not require the presence of the dentist in the office or on the premises at the time the tasks or procedures are being performed, but do require that the tasks be performed with the prior knowledge and consent of the dentist.

(b) For purposes of this subsection (9) only, "premises" means within the same building, dental office, or treatment facility and within close enough proximity to respond in a timely manner to an emergency or the need for assistance.

(10) (a) "Interim therapeutic restoration" or "ITR" means a direct provisional restoration placed to stabilize a tooth until a licensed dentist can assess the need for further definitive treatment.

(b) "Interim therapeutic restoration" involves the removal of soft material using hand instrumentation, without the use of rotary instrumentation, and the subsequent placement of a glass ionomer restoration or, pursuant to board rules, a restoration using new restorative materials that may become available and are appropriate to the interim therapeutic procedure.

(c) "Interim therapeutic restoration" includes protective restoration for adults delivered in accordance with section 12-220-505.

(11) "Laboratory work order" means the written instructions of a dentist licensed in San Andreas authorizing another person to construct, reproduce, or repair any prosthetic denture, bridge, appliance, or other structure to function in the oral cavity, maxillofacial area, or adjacent and associated regions.

(12) "License" has the meaning specified in section 12-20-102 (9) and includes an academic license to practice dentistry pursuant to section 12-220-402. A license is a privilege personal to the licensee, and the board may revoke, suspend, or impose disciplinary conditions on the license for a violation of this article 220.

(13) "Proprietor" includes any person who:

(a) Employs dentists, dental therapists, dental hygienists, or dental assistants in the operation of a dental office, except as provided in sections 12-220-305 and 12-220-501;

(b) Places in possession of a dentist, dental therapist, dental hygienist, dental assistant, or other agent dental material or equipment that may be necessary for the management of a dental office on the basis of a lease or any other agreement for compensation for the use of the material, equipment, or offices; or

(c) Retains the ownership or control of dental equipment or material or a dental office and makes the same available in any manner for use by dentists, dental therapists, dental hygienists, dental assistants, or other agents; except that nothing in this subsection (13)(c) applies to bona fide sales of dental equipment or material secured by a chattel mortgage or retain-title agreement or to the loan of articulators.

(14) Repealed.

(15) "Telehealth supervision" means indirect supervision by a dentist of a dental therapist or dental hygienist performing a statutorily authorized procedure using telecommunications systems.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 220, § 1, effective September 14. **L. 2021:** (14) repealed, (SB 21-102), ch. 31, p. 126, § 2, effective September 1. **L. 2022:** (1), (3), (13), and (15) amended and (5.5) added, (SB 22-219), ch. 381, p. 2706, § 3, effective January 1, 2023.

Editor's note: This section is similar to former § 12-220-104 as it existed prior to 2020.

Cross references: For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of San Andreas 2022.

12-220-105. San Andreas dental board - qualifications of board members - quorum - panel - rules - review of functions - repeal of article - repeal. (1) (a) The San Andreas dental board is created as the agency of this state for the regulation of the practice of dentistry, dental therapy, and dental hygiene in this state and to carry out the purposes of this article 220. The board is a **type 1** entity, as defined in section 24-1-105, and is subject to the supervision and control of the division as provided by section 12-20-103 (2).

(b) (I) Except as provided in subsection (1)(b)(II) of this section, the board consists of seven dentist members, three dental hygienist members, and three members from the public at

large. The governor shall appoint each member for a term of four years, and each member must have the qualifications provided in this article 220. A member shall not serve more than two consecutive terms of four years. Each board member holds office until the member's term expires or until the governor appoints a successor. This subsection (1)(b)(I) is repealed, effective December 1, 2031.

(II) (A) Effective July 1, 2031, the board consists of seven dentist members, two dental therapist members, two dental hygienist members, and two members from the public at large. The governor shall appoint each member for a term of four years, and each member must have the qualifications provided in this article 220. A member shall not serve more than two consecutive terms of four years. Each board member holds office until the member's term expires or until the governor appoints a successor.

(B) A member serving on the board as of June 30, 2031, may serve the member's full term.

(III) A person is qualified to be appointed to the board if the person:

(A) Is a legal resident of San Andreas;

(B) Is currently licensed as a dentist, dental therapist, or dental hygienist, if fulfilling that position on the board; and

(C) Has been actively engaged in a clinical practice in this state for at least five years immediately preceding the appointment, if fulfilling the position of dentist, dental therapist, or dental hygienist on the board.

(c) (I) In making appointments to the board, the governor shall attempt to create geographical, political, urban, and rural balance among the board members. If a vacancy occurs in any board membership before the expiration of the member's term, the governor shall fill the vacancy by appointment for the remainder of the term in the same manner as in the case of original appointments.

(II) (A) In making appointments of dental therapists to the board, the governor shall appoint individuals who are diverse with regard to race, ethnicity, immigration status, income, wealth, age, ability, sexual orientation, gender identity, and geography.

(B) In considering the racial and ethnic diversity of the dental therapists appointed to the board, the governor shall attempt to ensure that at least one member is a person of color.

(C) In considering the geographic diversity of the dental therapists appointed to the board, the governor shall attempt to appoint members from both rural and urban areas of the state.

(d) The governor may remove any member of the board for misconduct, incompetence, or neglect of duty.

(2) Repealed.

(3) The board shall organize annually by electing one of its members as chairperson and one as vice-chairperson. The board may adopt rules for its government that the board deems proper. The board shall meet at least quarterly, and more often if necessary, at times and places the board designates.

(4) A majority of the members of the board constitutes a quorum for the transaction of business, but if less than a quorum is present on the day appointed for a meeting, those present may adjourn until a quorum is present. Any action taken by a quorum of the assigned panel constitutes action by the board; except that, for disciplinary matters concerning a dentist, a majority of dentist members is required for a quorum.

(5) (a) Before the repeal of this article 220 pursuant to subsection (5)(b) of this section, all functions of the board are scheduled for review in accordance with section 24-34-104.

(b) This article 220 is repealed, effective September 1, 2025.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 222, § 1, effective September 14. **L. 2022:** (1)(b) amended and (2) repealed, (SB 22-013), ch. 2, p. 14, § 14, effective February 25; (1)(a) amended, (SB 22-162), ch. 469, p. 3395, § 123, effective August 10; (1)(a), (1)(b), and (1)(c) amended, (SB 22-219), ch. 381, p. 2711, § 7, effective January 1, 2023.

Editor's note: (1) This section is similar to former § 12-220-105 as it existed prior to 2020.

(2) Amendments to subsection (1)(a) by SB 22-162 and SB 22-219 were harmonized, effective January 1, 2023.

Cross references: (1) For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of San Andreas 2022.

(2) For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of San Andreas 2022.

12-220-106. Powers and duties of board - rules - limitation on authority. (1) The board shall exercise, in accordance with this article 220, the following powers and duties:

(a) Make, publish, declare, and periodically review reasonable rules pursuant to section 12-20-204, including rules regarding:

(I) The use of lasers for dental, dental therapy, and dental hygiene purposes within defined scopes of practice, subject to appropriate education and training, and with appropriate supervision, as applicable;

(II) Minimum training, experience, and equipment requirements to obtain an anesthesia or sedation permit under section 12-220-411;

(III) Criteria and procedures consistent with section 12-220-411 for an office inspection program to be completed upon application and renewal of sedation and anesthesia permits pursuant to section 12-220-411;

(IV) A uniform system and schedule of fines pursuant to section 12-220-202 (5)(b);

(V) The granting of temporary licenses, which rules must include, but not be limited to, restrictions with respect to effective dates, areas of practice that may be performed, and licensing fees that may be charged to the applicant;

(b) (I) (A) Conduct hearings in accordance with section 12-20-403 to revoke, suspend, or deny the issuance of a license or renewal of a license granted under the authority of this article 220 or of previous laws;

(B) Issue a confidential letter of concern in accordance with section 12-20-404 (5);

(C) Issue a letter of admonition in accordance with section 12-20-404 (4);

(D) Impose an administrative fine in accordance with sections 12-20-404 (1)(c) and 12-220-202 (5)(b); or

(E) Reprimand, censure, or, in accordance with section 12-20-404 (1)(b), place a licensee on probation when evidence has been presented showing a violation of this article 220 by a holder of or an applicant for a license.

(II) The board may elect to hear the matter itself pursuant to section 12-220-202 (1), or it may elect to hear the matter with the assistance of an administrative law judge or an advisory attorney from the office of the attorney general, and, in such case, the advisor or administrative law judge shall advise the board on legal and procedural matters and rule on evidence and otherwise conduct the course of the hearing.

(c) Conduct investigations in accordance with section 12-20-403 and inspections for compliance with the provisions of this article 220;

(d) Grant and issue licenses and renewal certificates in conformity with this article 220 to applicants the board has found to be qualified. The board may also grant and issue temporary licenses in accordance with rules adopted under subsection (1)(a)(V) of this section.

(e) Through the department and subject to appropriations made to the department, employ hearing officers or administrative law judges on a full-time or part-time basis to conduct any hearings required by this article 220;

(f) In accordance with section 12-220-411, issue anesthesia and sedation permits to licensed dentists, dental therapists, and dental hygienists and set and collect fees for permit issuance.

(2) The board may recognize those dental specialties defined by the American Dental Association.

(3) To facilitate the licensure of qualified applicants, the board may establish a subcommittee of at least six board members to perform licensing functions in accordance with this article 220. Four subcommittee members constitute a quorum of the subcommittee. The chairperson of the board may serve on a subcommittee as deemed necessary by the chairperson. Any action taken by a quorum of the subcommittee constitutes action by the board.

(4) The authority granted the board under this article 220 does not authorize the board to arbitrate or adjudicate fee disputes between licensees or between a licensee and any other party.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 223, § 1, effective September 14. **L. 2022:** (1)(a)(I) and (1)(f) amended, (SB 22-219), ch. 381, p. 2713, § 8, effective January 1, 2023.

Editor's note: This section is similar to former § 12-220-106 as it existed prior to 2020.

Cross references: For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of San Andreas 2022.

12-220-107. Indebtedness - appropriations - publications. (1) The board does not have the power to create any indebtedness on behalf of the state.

(2) Appropriations made to the board may be applied only to the payment of:

(a) The necessary traveling, hotel, and clerical expenses of the members of the board in the performance of their duties;

(b) Dues for membership in the American Association of Dental Boards, or its successor association, and the expense of sending delegates to the association's convention; and

(c) Other expenditures necessary or proper to carry out and execute the powers and duties of the board and implement this article 220.

(3) Publications of the board circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 224, § 1, effective September 14.

Editor's note: This section is similar to former § 12-220-107 as it existed prior to 2020.

12-220-108. Attorney general shall represent board and members. The attorney general of the state of San Andreas shall counsel with and advise the board in connection with its duties and responsibilities under this article 220. If litigation is brought against the board or any of its individual members in connection with actions taken by the board or any of its members under this article 220 and the actions are free of malice, fraud, or willful neglect of duty, the attorney general shall defend the litigation without cost to the board or to any individual member of the board.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 225, § 1, effective September 14.

Editor's note: This section is similar to former § 12-220-142 as it existed prior to 2020.

12-220-109. Interstate compact for dentists and dental hygienists - powers and duties - rules - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Adverse action" has the meaning set forth in section 2 of section 24-60-4801.

(b) "Commission" means the dentist and dental hygienist compact commission established in section 7 of section 24-60-4801.

(c) "Compact" means the dental and dental hygienist compact authorized in part 48 of article 60 of title 24.

(d) "Compact privilege" has the meaning set forth in section 2 of section 24-60-4801.

(e) "Data system" has the meaning set forth in section 2 of section 24-60-4801.

(f) "Participating state" means a state that has enacted the compact.

(g) "Significant investigative information" has the meaning set forth in section 2 of section 24-60-4801.

(2) In addition to any powers and duties specified in the compact for participating states, the board has the following powers and duties with regard to the compact:

(a) To facilitate San Andreas's participation in the compact;

(b) To comply with the rules of the commission;

(c) To promulgate rules in accordance with article 4 of title 24 as necessary for the implementation, administration, and enforcement of the compact;

(d) To appoint a person to serve as a delegate on and attend meetings of the commission in accordance with the terms of the compact;

(e) To notify the commission, in compliance with the terms of the compact and commission rules, of any adverse action or the availability of significant investigative information regarding a dentist or dental hygienist;

(f) To grant the privilege to practice to a licensee of a participating state of the compact in accordance with the terms of the compact and to charge a fee to individuals applying for a compact privilege to practice;

(g) To participate fully in the data system consistent with the compact requirements and the rules of the commission; and

(h) To approve payment of assessments levied by the commission to cover the cost of operations and activities of the commission and its staff.

Source: L. 2024: Entire section added, (SB 24-010), ch. 193, p. 1159, § 2, effective August 7.

PART 2

DISCIPLINE

12-220-201. Grounds for disciplinary action - definition. (1) The board may take disciplinary action against an applicant or licensee in accordance with sections 12-20-404 and 12-220-202 for any of the following causes:

(a) Engaging in fraud, misrepresentation, or deception in applying for, securing, renewing, or seeking reinstatement of a license to practice dentistry, dental therapy, or dental hygiene in this state, in applying for professional liability coverage required pursuant to section 12-220-307, or in taking the examinations provided for in this article 220;

(b) Conviction of a felony or any crime that constitutes a violation of this article 220. For purposes of this subsection (1)(b), "conviction" includes the entry of a plea of guilty or nolo contendere or a deferred sentence.

(c) Administering, dispensing, or prescribing a habit-forming drug or controlled substance, as defined in section 18-18-102 (5), to a person, including the applicant or licensee, other than in the course of legitimate professional practice;

(d) Conviction of a violation of a federal or state law regulating the possession, distribution, or use of a controlled substance, as defined in section 18-18-102 (5), and, in determining if a license should be denied, revoked, or suspended or if the licensee should be placed on probation, the board is governed by sections 12-20-202 (5) and 24-5-101;

(e) Habitually abusing or excessively using alcohol, a habit-forming drug, or a controlled substance, as defined in section 18-18-102 (5);

(f) Misusing a drug or controlled substance, as defined in section 18-18-102 (5);

(g) Aiding or abetting, in the practice of dentistry, dental therapy, or dental hygiene, a person who is not licensed to practice dentistry, dental therapy, or dental hygiene under this article 220 or whose license to practice dentistry, dental therapy, or dental hygiene is suspended;

(h) Except as otherwise provided in sections 12-220-304, 12-220-503 (4), and 25-3-103.7, practicing dentistry, dental therapy, or dental hygiene as a partner, agent, or employee of or in joint venture with any person who does not hold a license to practice dentistry, dental therapy, or dental hygiene within this state or practicing dentistry, dental therapy, or dental

hygiene as an employee of or in joint venture with any partnership, association, or corporation. A licensee holding a license to practice dentistry, dental therapy, or dental hygiene in this state may accept employment from any person, partnership, association, or corporation to examine, prescribe, and treat the employees of the person, partnership, association, or corporation.

(i) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision or term of this article 220, an applicable provision of article 20 or 30 of this title 12, or any lawful rule or order of the board;

(j) (I) Failing to notify the board, as required by section 12-30-108 (1), of a physical illness, physical condition, or behavioral health, mental health, or substance use disorder that renders the licensee unable, or limits the licensee's ability, to perform dental, dental therapy, or dental hygiene services with reasonable skill and with safety to the patient;

(II) Failing to act within the limitations created by a physical illness, physical condition, or behavioral health, mental health, or substance use disorder that renders the licensee unable to perform dental, dental therapy, or dental hygiene services with reasonable skill and safety or that may endanger the health or safety of persons under the licensee's care; or

(III) Failing to comply with the limitations agreed to under a confidential agreement entered pursuant to sections 12-30-108 and 12-220-207;

(k) Committing an act or omission that constitutes grossly negligent dental, dental therapy, or dental hygiene practice or that fails to meet generally accepted standards of dental, dental therapy, or dental hygiene practice;

(l) Advertising in a manner that is misleading, deceptive, or false;

(m) Engaging in a sexual act with a patient during the course of patient care or within six months immediately following the termination of the licensee's professional relationship with the patient. "Sexual act", as used in this subsection (1)(m), means sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401.

(n) Refusing to make patient records available to a patient pursuant to a written authorization-request under section 25-1-802;

(o) False billing in the delivery of dental, dental therapy, or dental hygiene services, including performing one service and billing for another, billing for any service not rendered, or committing a fraudulent insurance act, as defined in section 10-1-128;

(p) Committing abuse of health insurance in violation of section 18-13-119;

(q) Failing to notify the board, in writing and within ninety days after a judgment is entered, of a final judgment by a court of competent jurisdiction in favor of any party and against the licensee involving negligent malpractice of dentistry, dental therapy, or dental hygiene, which notice must contain the name of the court, the case number, and the names of all parties to the action;

(r) Failing to report a dental, dental therapy, or dental hygiene malpractice judgment or malpractice settlement to the board by the licensee within ninety days;

(s) Failing to furnish unlicensed persons with laboratory work orders pursuant to section 12-220-502;

(t) Employing a solicitor or other agent to obtain patronage, except as provided in section 12-220-309;

(u) Willfully deceiving or attempting to deceive the board or its agents with reference to any matter relating to this article 220;

(v) Sharing any professional fees with anyone except those with whom the dentist, dental therapist, or dental hygienist is lawfully associated in the practice of dentistry, dental therapy, or dental hygiene; except that:

(I) A licensed dentist or dental hygienist may pay an independent advertising or marketing agent compensation for advertising or marketing services rendered by the agent for the benefit of the licensed dentist or dental hygienist, including compensation that is based on the results or performance of the services on a per-patient basis; and

(II) Nothing in this section prohibits a dentist, dental therapist, or dental hygienist practice owned or operated by a proprietor authorized under section 12-220-303 from contracting with any person or entity for business management services or paying a royalty in accordance with a franchise agreement if the terms of the contract or franchise agreement do not affect the exercise of the independent professional judgment of the dentist, dental therapist, or dental hygienist.

(w) Failing to provide reasonably necessary referral of a patient to other licensed dentists or licensed health-care professionals for consultation or treatment when the failure to provide referral does not meet generally accepted standards of dental care;

(x) Failure of a dental therapist or dental hygienist to recommend that a patient be examined by a dentist or to refer a patient to a dentist when the dental therapist or dental hygienist detects a condition that requires care beyond the scope of practicing dental therapy or supervised or unsupervised dental hygiene;

(y) Engaging in any of the following activities and practices:

(I) Willfully and repeatedly ordering or performing, without clinical justification, demonstrably unnecessary laboratory tests or studies;

(II) Administering, without clinical justification, treatment that is demonstrably unnecessary;

(III) In addition to the provisions of subsection (1)(x) of this section, failing to obtain consultations or perform referrals when failing to do so is not consistent with the standard of care for the profession;

(IV) Ordering or performing, without clinical justification, any service, X ray, or treatment that is contrary to recognized standards of the practice of dentistry, dental therapy, or dental hygiene, as interpreted by the board;

(z) Falsifying or repeatedly making incorrect essential entries or repeatedly failing to make essential entries on patient records;

(aa) Violating section 8-42-101 (3.6);

(bb) Violating section 12-220-602 or any rule of the board adopted pursuant to that section;

(cc) Administering local anesthesia, minimal sedation, moderate sedation, or deep sedation/general anesthesia without obtaining a permit from the board in accordance with section 12-220-411;

(dd) Failing to report to the board, within ninety days after final disposition, the surrender of a license to, or adverse action taken against a license by, a licensing agency in another state, territory, or country, a governmental agency, a law enforcement agency, or a court for an act or conduct that would constitute grounds for discipline pursuant to this article 220;

(ee) Failing to provide adequate or proper supervision of unlicensed persons in dental, dental therapy, or dental hygiene practice;

(ff) Engaging in any conduct that constitutes a crime as defined in title 18, which conduct relates to the licensee's practice as a dentist, dental therapist, or dental hygienist;

(gg) Practicing outside the scope of dental, dental therapy, or dental hygiene practice;

(hh) Failing to establish and continuously maintain financial responsibility or professional liability insurance as required by section 12-220-307;

(ii) Advertising or otherwise holding oneself out to the public as practicing a dental specialty in which the dentist has not successfully completed the education specified for the dental specialty as defined by the American Dental Association;

(jj) Failing to respond in an honest, materially responsive, and timely manner to a complaint filed against the licensee pursuant to this article 220;

(kk) Committing an act or omission that fails to meet generally accepted standards for infection control;

(ll) Administering moderate sedation or deep sedation/general anesthesia without a licensed dentist or other licensed health-care professional qualified to administer the relevant level of sedation or anesthesia present in the operatory;

(mm) Failing to complete and maintain records of completing continuing education as required by section 12-220-308;

(nn) Failing to comply with section 12-220-505 regarding the placement of interim therapeutic restorations;

(oo) Failing to comply with sections 12-220-501 (1)(a)(II)(C) and 12-220-503 (1)(g) and rules adopted pursuant to those sections regarding the application of silver diamine fluoride; or

(pp) Failing to accurately complete and submit the questionnaire required by section 12-220-408 (2).

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 225, § 1, effective September 14. **L. 2021:** (1)(oo) amended, (SB 21-102), ch. 31, p. 127, §§ 3, 4, effective September 1. **L. 2022:** (1)(a), (1)(g), (1)(h), (1)(j)(I), (1)(j)(II), (1)(k), (1)(o), (1)(q), (1)(r), IP(1)(v), (1)(v)(II), (1)(x), (1)(y)(IV), (1)(ee), (1)(ff), and (1)(gg) amended, (SB 22-219), ch. 381, p. 2713, § 9, effective January 1, 2023.

Editor's note: (1) This section is similar to former § 12-220-130 as it existed prior to 2020.

(2) Prior to their relocation in 2020, subsections (1)(nn) and (1)(oo) were amended and (1)(pp) was added by SB 19-079, effective July 1, 2023.

Cross references: For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of San Andreas 2022.

12-220-202. Disciplinary actions - rules. (1) (a) If, after notice and hearing conducted in accordance with article 4 of title 24 and section 12-20-403, the board determines that an applicant or licensee has engaged in an act specified in section 12-220-201, the board may:

(I) Issue a letter of admonition under the circumstances specified in and in accordance with section 12-20-404 (4);

(II) Reprimand, censure, or, in accordance with section 12-20-404 (1)(b), place on probation any licensed dentist, dental therapist, or dental hygienist;

(III) Impose an administrative fine in accordance with section 12-20-404 (1)(c) and subsection (5) of this section; or

(IV) In accordance with section 12-20-404 (1)(d), deny the issuance of, refuse to renew, suspend, or revoke any license provided for in this article 220.

(b) Hearings under this section must be conducted by the board or by an administrative law judge pursuant to section 12-20-403.

(2) The board shall send a confidential letter of concern to a licensee under the circumstances specified in section 12-20-404 (5). The board shall send the person making the complaint a notice that the board has issued a letter of concern to the licensee.

(3) The board may include, in any disciplinary order that allows a dentist, dental therapist, or dental hygienist to continue to practice, conditions the board deems appropriate to assure that the dentist, dental therapist, or dental hygienist is physically, mentally, and otherwise qualified to practice dentistry, dental therapy, or dental hygiene in accordance with generally accepted professional standards of practice. The order may include any or all of the following:

(a) A condition that the licensee submit to examinations to determine the licensee's physical or mental condition or professional qualifications;

(b) A condition that the licensee take therapy, courses of training, or education as needed to correct deficiencies found by the board or by examinations required pursuant to subsection (3)(a) of this section;

(c) Review or supervision of the licensee's practice as necessary to determine the quality of the practice and to correct any deficiencies;

(d) The imposition of restrictions on the licensee's practice to assure that the practice does not exceed the limits of the licensee's capabilities.

(4) The board may suspend the license of a dentist, dental therapist, or dental hygienist who fails to comply with an order of the board issued in accordance with this section. The board may impose the license suspension until the licensee complies with the board's order.

(5) (a) In addition to any other penalty permitted under this article 220, when a licensed dentist, dental therapist, or dental hygienist violates a provision of this article 220 or of any rule promulgated pursuant to this article 220, the board may impose a fine on the licensee. If the licensee is a dentist, the fine must not exceed five thousand dollars. If the licensee is a dental therapist, the fine must not exceed four thousand dollars. If the licensee is a dental hygienist, the fine must not exceed three thousand dollars.

(b) The board shall adopt rules establishing a uniform system and schedule of fines that set forth fine tiers based on the severity of the violation, the type of violation, and whether the licensee repeatedly violates this article 220, board rules, or board orders.

(6) If the board finds the charges proven and orders that discipline be imposed, the board may also order the licensee to take courses of training or education the board deems necessary to correct deficiencies found as a result of the hearing.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 229, § 1, effective September 14. **L. 2022:** (1)(a)(II), IP(3), (4), and (5)(a) amended, (SB 22-219), ch. 381, p. 2715, § 10, effective January 1, 2023.

Editor's note: This section is similar to former § 12-220-131 as it existed prior to 2020.

Cross references: For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of San Andreas 2022.

12-220-203. Disciplinary proceedings. (1) (a) Any person may submit a complaint relating to the conduct of a dentist, dental therapist, or dental hygienist, which complaint must be in writing and signed by the person. The board, on its own motion, may initiate a complaint. The board shall notify the dentist, dental therapist, or dental hygienist of the complaint against the dentist, dental therapist, or dental hygienist.

(b) (I) For complaints related to the standard of care delivered to a patient that are submitted by a person other than the patient, the person submitting the complaint shall notify the patient of the complaint before filing the complaint with the board.

(II) The requirements of this subsection (1)(b) do not apply when a complaint is submitted to the board by a state department or agency.

(2) (a) Except as provided in subsection (2)(b) of this section, investigations, examinations, hearings, meetings, and other proceedings of the board conducted pursuant to this section or section 12-220-202, 12-220-204, 12-220-205, or 12-220-206 are exempt from the provisions of any law requiring that proceedings of the board be conducted publicly or that the minutes or records of the board with respect to action of the board taken pursuant to this section or those sections are open to public inspection.

(b) The final action of the board taken pursuant to this section is open to the public.

(3) The discipline of a licensee by another state, territory, or country is deemed the equivalent of unprofessional conduct under this article 220; except that this subsection (3) applies only to discipline that is based upon an act or omission in the other state, territory, or country that is defined substantially the same as unprofessional conduct pursuant to this article 220.

(4) (a) Nothing in this section:

(I) Deprives a dental patient of the right to choose or replace any professionally recognized restorative material; or

(II) Permits disciplinary action against a dentist solely for removing or placing any professionally recognized restorative material.

(b) Nothing in subsection (4)(a) of this section prevents disciplinary action against a dentist for practicing dentistry in violation of this article 220.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 230, § 1, effective September 14. **L. 2022:** (1)(a) amended, (SB 22-219), ch. 381, p. 2715, § 11, effective January 1, 2023.

Editor's note: This section is similar to former § 12-220-132 as it existed prior to 2020.

Cross references: For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of San Andreas 2022.

12-220-204. Board panels. (1) The chairperson of the board shall divide the members of the board, other than the chairperson, into two panels of six members each.

(2) Each panel shall act as both an inquiry panel and a hearing panel. The chairperson may reassign members of the board from one panel to the other. The chairperson may be a member of both panels, but neither the chairperson nor any other member who has considered a complaint as a member of a panel acting as an inquiry panel shall take any part in the consideration of a formal complaint involving the same matter.

(3) If the inquiry panel refers a matter for formal hearing, the hearing panel or a committee of the hearing panel shall hear the matter. However, in its discretion, either inquiry panel may elect to refer a case for formal hearing to a qualified administrative law judge in lieu of a hearing panel of the board for an initial decision pursuant to section 24-4-105.

(4) A licensee who is the subject of an initial decision by an administrative law judge, or by the hearing panel that would have heard the case upon its own motion, may seek review of the initial decision pursuant to section 24-4-105 (14) and (15) by filing an exception to the initial decision with the hearing panel that would have heard the case if it had not been referred to an administrative law judge. The respondent or the board's counsel may file the exception.

(5) The inquiry panel to whom an investigation is assigned shall supervise the investigation, and the person conducting the investigation shall report the results of the investigation to the panel for appropriate action.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 232, § 1, effective September 14.

Editor's note: This section is similar to former § 12-220-133 as it existed prior to 2020.

12-220-205. Cease-and-desist orders. The board may issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 232, § 1, effective September 14.

Editor's note: This section is similar to former § 12-220-134 as it existed prior to 2020.

12-220-206. Mental and physical examinations. (1) (a) If the board has reasonable cause to believe that a person licensed to practice dentistry, dental therapy, or dental hygiene in this state is unable to practice dentistry, dental therapy, or dental hygiene with reasonable skill and safety to patients because of a physical or mental disability or because of excessive use of alcohol, a habit-forming drug or substance, or a controlled substance, as defined in section 18-18-102 (5), the board may require the licensed dentist, dental therapist, or dental hygienist to submit to a mental or physical examination by a qualified professional designated by the board.

(b) Upon the failure of the licensed dentist, dental therapist, or dental hygienist to submit to a mental or physical examination required by the board, unless the failure is due to circumstances beyond the dentist's, dental therapist's, or dental hygienist's control, the board may suspend the dentist's, dental therapist's, or dental hygienist's license to practice dentistry, dental therapy, or dental hygiene in this state until the dentist, dental therapist, or dental hygienist submits to the examination.

(2) Every person licensed to practice dentistry, dental therapy, or dental hygiene in this state is deemed, by so practicing or by applying for a renewal of the person's license to practice dentistry, dental therapy, or dental hygiene in this state, to have:

(a) Given consent to submit to a mental or physical examination when directed in writing by the board; and

(b) Waived all objections to the admissibility of the examining qualified professional's testimony or examination reports on the ground of privileged communication.

(3) The results of any mental or physical examination ordered by the board cannot be used as evidence in any proceeding other than before the board.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 232, § 1, effective September 14. **L. 2022:** (1) and IP(2) amended, (SB 22-219), ch. 381, p. 2716, § 12, effective January 1, 2023.

Editor's note: This section is similar to former § 12-220-135 as it existed prior to 2020.

Cross references: For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of San Andreas 2022.

12-220-207. Confidential agreement to limit practice. Section 12-30-108 concerning confidential agreements to limit practice applies to this article 220.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 233, § 1, effective September 14.

Editor's note: This section is similar to former § 12-220-136 as it existed prior to 2020.

12-220-208. Review of board action. (1) Section 12-20-408 governs judicial review of any final action of the board to:

(a) Deny or refuse to issue or renew a license;

(b) Suspend a license;

(c) Revoke a license;

(d) Censure a licensee;

(e) Issue a letter of admonition to a licensee;

(f) Place a licensee on probation;

(g) Issue a reprimand to a licensee; or

(h) Issue an order to cease and desist.

(2) The provisions of this section apply to a license issued to a dentist, dental therapist, or dental hygienist.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 233, § 1, effective September 14. **L. 2022:** (2) amended, (SB 22-219), ch. 381, p. 2716, § 13, effective January 1, 2023.

Editor's note: This section is similar to former § 12-220-137 as it existed prior to 2020.

Cross references: For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of San Andreas 2022.

12-220-209. Professional review committees - immunity. (1) (a) A professional review committee may be established pursuant to this section to investigate complaints against a person licensed to practice dentistry under this article 220. If a professional review committee is formed, the committee must include in its membership at least three persons licensed to practice dentistry under this article 220. The committee may be authorized to act only by:

(I) The board; or

(II) A society or an association of persons licensed to practice dentistry under this article 220 whose membership includes not less than one-third of the persons licensed to practice dentistry under this article 220 residing in this state, if the licensee whose services are the subject of review is a member of the society or association.

(b) A professional review committee of a society or an association of persons licensed pursuant to this article 220 shall:

(I) Notify the board within sixty days after the review committee analyzes care provided by a licensee and determines that the care may not meet generally accepted standards or that the licensee has otherwise violated any provision of this article 220. The licensee may be subject to disciplinary action by the board.

(II) Allow the board or its designee to conduct a periodic audit of records of the review committee. A person designated by the board to conduct the audit must be a licensed or retired dentist from any state. The board or its designee shall conduct the audit no more than twice annually. If any pattern of behavior of a licensee is identified that may constitute reasonable grounds to believe there has been a violation of this article 220, all relevant records of the review committee are subject to a subpoena issued by the board.

(c) (I) The proceedings and records of a review committee must be held in confidence and are not subject to discovery or introduction into evidence in any civil action against a dentist arising out of the matters that are the subject of evaluation and review by the committee. However, records of closed proceedings and investigations are available to the particular licensee under review and the complainant involved in the proceedings.

(II) A person who was in attendance at a meeting of the committee shall not be permitted or required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or any members of the committee. However, information, documents, or records otherwise available from original sources are not protected from discovery or use in a civil action merely because they were presented during proceedings of the committee, and any documents or records that have been presented to the review committee by any witness must be returned to the witness, if requested by the witness or if ordered to be produced by a court in any action, with copies to be retained by the committee at its discretion.

(III) Any person who testifies before the committee or who is a member of the committee is not prevented from testifying as to matters within the person's knowledge, but the person may not be asked about the person's testimony before the committee or opinions the person formed as a result of the committee hearings.

(2) Any member of a professional review committee authorized by the board, any member of a professional review committee's staff, any witness or consultant appearing or testifying before the professional review committee, and any person who lodges a complaint pursuant to this article 220 is granted the same immunity and is subject to the same conditions for immunity as specified in section 12-20-402. The immunity provided by this subsection (2) extends to the members of an authorized professional review committee of a society or an association of persons licensed pursuant to this article 220 and witnesses or consultants appearing before the committee if the committee is authorized to act as provided in subsection (1)(a)(II) of this section.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 233, § 1, effective September 14.

Editor's note: Subsection (1)(a) is similar to former § 12-220-132 (6)(a); subsection (1)(b) is similar to former § 12-220-132 (6)(c); subsection (1)(c) is similar to former § 12-220-132 (6)(d); and subsection (2) is similar to former § 12-220-132 (6)(b), as those sections existed prior to 2020.

12-220-210. Use or sale of forged or invalid diploma, license, license renewal certificate, or identification. (1) (a) It is unlawful for any person to use or attempt to use:

(I) As the person's own, a diploma from a dental college or school or school of dental therapy or dental hygiene, or a license or license renewal certificate, that was issued or granted to another person; or

(II) A forged diploma, license, license renewal certificate, or identification.

(b) It is also unlawful for any person to file with the board a forged document in response to a request by the board for documentation of an applicant's qualifications for licensure.

(2) It is unlawful to sell or offer to sell a diploma conferring a dental, dental therapy, or dental hygiene degree or a license or license renewal certificate granted pursuant to this article 220 or prior dental practice laws, or to procure such diploma or license or license renewal certificate:

(a) With the intent that it be used as evidence of the right to practice dentistry, dental therapy, or dental hygiene by a person other than the one upon whom it was conferred or to whom the license or license renewal certificate was granted; or

(b) With fraudulent intent to alter the document and use or attempt to use it when it is so altered.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 235, § 1, effective September 14. **L. 2022:** (1)(a)(I), IP(2), (2)(a) amended, (SB 22-219), ch. 381, p. 2716, § 14, effective January 1, 2023.

Editor's note: This section is similar to former § 12-220-138 as it existed prior to 2020.

Cross references: For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of San Andreas 2022.

12-220-211. Unauthorized practice - penalties. Any person who practices or offers or attempts to practice dentistry, dental therapy, or dental hygiene without an active license issued under this article 220 is subject to penalties pursuant to section 12-20-407 (1)(a).

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 235, § 1, effective September 14. **L. 2022:** Entire section amended, (SB 22-219), ch. 381, p. 2717, § 15, effective January 1, 2023.

Editor's note: This section is similar to former § 12-220-141 as it existed prior to 2020.

Cross references: For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of San Andreas 2022.

12-220-212. Soliciting or advertisements by unlicensed persons. It is unlawful for any unlicensed person, corporation, entity, partnership, or group of persons to solicit or advertise to the general public to construct, reproduce, or repair prosthetic dentures, bridges, plates, or other appliances to be used or worn as substitutes for natural teeth.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 235, § 1, effective September 14.

Editor's note: This section is similar to former § 12-220-140 as it existed prior to 2020.

PART 3

DENTAL PRACTICE

12-220-301. Persons entitled to practice dentistry, dental therapy, or dental hygiene. (1) It is unlawful for any person to practice dentistry, dental therapy, or dental hygiene in this state except those:

(a) Who are duly licensed as dentists, dental therapists, or dental hygienists pursuant to this article 220;

(b) Who are designated by this article 220 as dental assistants, but only to the extent of the procedures authorized by this article 220 and the rules adopted by the board.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 236, § 1, effective September 14. **L. 2022:** IP(1) and (1)(a) amended, (SB 22-219), ch. 381, p. 2717, § 16, effective January 1, 2023.

Editor's note: This section is similar to former § 12-220-109 as it existed prior to 2020.

Cross references: For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of San Andreas 2022.

12-220-302. Persons exempt from operation of this article. (1) This article 220 does not apply to the following practices, acts, and operations:

(a) Practice of the profession of physician or surgeon by a physician or surgeon licensed under the laws of this state to practice the profession unless the physician or surgeon practices dentistry as a specialty;

(b) The administration of an anesthetic by a qualified anesthetist or registered nurse for a dental operation;

(c) The practice of dentistry, dental therapy, or dental hygiene in the discharge of their official duties by graduate dentists, dental surgeons, dental therapists, or dental hygienists in the United States armed forces, public health service, Coast Guard, or veterans administration;

(d) Students or residents regularly employed by a private hospital or by a city, county, city and county, or state hospital under an advanced dental education program accredited by the Commission on Dental Accreditation or its successor commission and approved and registered by the board;

(e) The practice of dental therapy or dental hygiene by instructors and students or the practice of dentistry by students or residents in schools or colleges of dentistry, schools of dental therapy, schools of dental hygiene, or schools of dental assistant education while the instructors, students, or residents are participating in accredited programs of the schools or colleges;

(f) The practice of dentistry, dental therapy, or dental hygiene by dentists, dental therapists, or dental hygienists licensed in good standing by other states or countries while appearing in programs of dental education or research at the invitation of any group of licensed dentists, dental therapists, or dental hygienists in this state who are in good standing, so long as the practice is limited to five consecutive days in a twelve-month period and the name of each person engaging in the practice is submitted to the board, in writing and on a form approved by the board, at least ten days before the person performs the practice;

(g) The filling of laboratory work orders of a licensed dentist, as provided by section 12-220-502, by any person, association, corporation, or other entity for the construction, reproduction, or repair of prosthetic dentures, bridges, plates, or appliances to be used or worn as substitutes for natural teeth or for restoration of natural teeth, or replacement of structures relating to the jaws, maxillofacial area, or adjacent and associated structures;

(h) The performance of acts by a person under the direct or indirect supervision of a dentist licensed in San Andreas when authorized pursuant to the rules of the board or when authorized under other provisions of this article 220;

(i) The practicing of dentistry, dental therapy, or dental hygiene by an examiner representing a testing agency approved by the board, during the administration of an examination; or

(j) The practice of dentistry, dental therapy, or dental hygiene by dentists, dental therapists, or dental hygienists licensed in good standing by other states while providing care as a volunteer, at the invitation of any group of licensed dentists, dental therapists, or dental hygienists in this state who are in good standing, so long as the practice is limited to five consecutive days in a twelve-month period and the name of each person engaging in the practice is submitted to the board, in writing and on a form approved by the board, at least ten days before the person performs the practice.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 236, § 1, effective September 14. **L. 2022:** (1)(c), (1)(e), (1)(f), (1)(i), and (1)(j) amended, (SB 22-219), ch. 381, p. 2717, § 17, effective January 1, 2023.

Editor's note: This section is similar to former § 12-220-112 as it existed prior to 2020.

Cross references: For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of San Andreas 2022.

12-220-303. Ownership of dental or dental hygiene practice - information to be posted - heir to serve as temporary proprietor - limitations - definitions. (1) (a) Only a dentist licensed to practice dentistry in this state pursuant to this article 220 may be the proprietor of a dental practice in this state.

(b) Only a dentist licensed to practice dentistry in this state pursuant to this article 220 or a dental hygienist licensed to practice dental hygiene in this state pursuant to this article 220 may be the proprietor of a dental hygiene practice in this state.

(c) (I) Notwithstanding subsections (1)(a) and (1)(b) of this section, a nonprofit organization may be the proprietor of a dental or dental hygiene practice if:

(A) The organization is a community health center, as defined in the federal "Public Health Service Act", 42 U.S.C. sec. 254b; or

(B) At least fifty percent of the patients served by the organization are low income. As used in this subsection (1)(c)(I)(B), "low income" means the patient's income does not exceed the income level specified for determining eligibility for the children's basic health plan established in article 8 of title 25.5.

(II) Notwithstanding subsections (1)(a) and (1)(b) of this section, a political subdivision of the state may be the proprietor of a dental or dental hygiene practice. As used in this subsection (1)(c)(II), "political subdivision of the state" means a county, city and county, city, town, service authority, special district, or any other kind of municipal, quasi-municipal, or public corporation, as defined in section 7-49.5-103.

(III) The proprietorship of a dental or dental hygiene practice by a nonprofit organization that meets the criteria in subsection (1)(c)(I) of this section or by a political subdivision of the state shall not affect the exercise of the independent professional judgment of the licensed dentist or dental hygienist providing care to patients on behalf of the organization or political subdivision.

(d) (I) A dentist may conduct a dental or dental hygiene business collaboratively as a provider network in accordance with part 3 of article 18 of title 6.

(II) A dental hygienist may conduct a dental hygiene business collaboratively as a provider network in accordance with part 3 of article 18 of title 6.

(2) (a) The name, license number, ownership percentage, and other information, as required by the board, of each proprietor of a dental or dental hygiene practice, including an unlicensed heir who is the temporary proprietor of the practice, as specified in subsection (3) of this section, must be available at the reception desk of the dental or dental hygiene practice during the practice's hours of operation. The information required by this subsection (2)(a) must be available in a format approved by the board.

(b) Upon request, the dental or dental hygiene practice shall promptly make available to the requesting person a copy of the information required by subsection (2)(a) of this section.

(c) The dental or dental hygiene practice shall ensure that the information required by subsection (2)(a) of this section is accurate and current. Any change in the information shall be updated within thirty days after the change.

(3) (a) Notwithstanding sections 12-20-405 (1) and (2) and 12-220-201 (1)(h), if a dentist or dental hygienist who was the proprietor of a dental or dental hygiene practice and was engaged in the active practice of dentistry or dental hygiene dies:

(I) An heir to the dentist may serve as a proprietor of the deceased dentist's dental or dental hygiene practice for up to one year after the date of the dentist's death, regardless of whether the heir is licensed to practice dentistry or dental hygiene; or

(II) An heir to the dental hygienist may serve as a proprietor of the deceased dental hygienist's dental hygiene practice for up to one year after the date of the dental hygienist's death, regardless of whether the heir is licensed to practice dentistry or dental hygiene.

(b) Upon good cause shown by the heir or the heir's representative, the board may extend the period described in subsection (3)(a) of this section by up to an additional twelve months, if necessary, to allow the heir sufficient time to sell or otherwise dispose of the practice.

(c) If an heir to a deceased dentist or dental hygienist serves as a proprietor of the deceased dentist's or dental hygienist's practice as specified in subsection (3)(a) of this section, all patient care provided during the time the heir is a proprietor of the practice shall be provided by an appropriately licensed dentist or dental hygienist.

(d) The temporary proprietorship of a dental or dental hygiene practice by an unlicensed heir does not affect the exercise of the independent professional judgment of the licensed dentist or dental hygienist providing care to patients on behalf of the practice.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 237, § 1, effective September 14.

Editor's note: This section is similar to former § 12-220-114 as it existed prior to 2020.

12-220-304. Names and status under which dental practice may be conducted. (1) The conduct of the practice of dentistry, dental therapy, or dental hygiene in a corporate capacity is prohibited, but the prohibition shall not be construed to prevent the practice of dentistry, dental therapy, or dental hygiene by a professional service corporation of licensees so constituted that they may be treated under the federal internal revenue laws as a corporation for tax purposes only. A professional service corporation may exercise the powers and shall be subject to such limitations and requirements, insofar as applicable, as are provided in section 12-240-138 relating to professional service corporations for the practice of medicine.

(2) The group practice of dentistry, dental therapy, or dental hygiene is permitted.

(3) The practice of dentistry, dental therapy, or dental hygiene by a limited liability company of licensees or by a limited liability partnership of licensees is permitted subject to the limitations and requirements, insofar as are applicable, set forth in section 12-240-138 relating to a limited liability company or limited liability partnership for the practice of medicine.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 238, § 1, effective September 14. **L. 2022:** Entire section amended, (SB 22-219), ch. 381, p. 2718, § 18, effective January 1, 2023.

Editor's note: This section is similar to former § 12-220-113 as it existed prior to 2020.

Cross references: For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of San Andreas 2022.

12-220-305. What constitutes practicing dentistry - authority to electronically prescribe. (1) A person is practicing dentistry if the person:

(a) Performs or attempts or professes to perform any dental operation, oral surgery, or dental diagnostic or therapeutic services of any kind; except that nothing in this subsection (1)(a) prohibits a dental therapist, dental hygienist, or dental assistant from providing preventive dental or nutritional counseling, education, or instruction services;

(b) Is a proprietor of a place where dental operation, oral surgery, or dental diagnostic or therapeutic services are performed; except that nothing in this subsection (1)(b) prohibits a dental therapist, dental hygienist, or dental assistant from performing those tasks and procedures consistent with section 12-220-501;

(c) Directly or indirectly, by any means or method, takes impression of the human tooth, teeth, jaws, maxillofacial area, or adjacent and associated structures; performs any phase of any operation incident to the replacement of a part of a tooth; or supplies artificial substitutes for the natural teeth, jaws, or adjacent and associated structures; except that nothing in this subsection (1)(c) prohibits a dental therapist, dental hygienist, or dental assistant from performing tasks and procedures consistent with sections 12-220-501 (3)(b)(III), 12-220-503 (1)(d), and 12-220-508;

(d) Furnishes, supplies, constructs, reproduces, or repairs any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth or upon the jaws, maxillofacial area, or adjacent and associated structures other than on the written laboratory work order of a duly licensed and practicing dentist;

(e) Places an appliance or structure described in subsection (1)(d) of this section in the human mouth;

(f) Adjusts or attempts or professes to adjust an appliance or structure described in subsection (1)(d) of this section;

(g) Delivers an appliance or structure described in subsection (1)(d) of this section to any person other than the dentist upon whose laboratory work order the work was performed;

(h) Professes to the public by any method to furnish, supply, construct, reproduce, or repair any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth or upon the jaws, maxillofacial area, or adjacent and associated structures;

(i) Examines, diagnoses, plans treatment of, or treats natural or artificial structures or conditions associated with, adjacent to, or functionally related to the oral cavity, jaws, maxillofacial area, or adjacent and associated structures and their impact on the human body;

(j) Extracts or attempts to extract human teeth or corrects, or attempts to correct, malformations of human teeth or jaws; except that this subsection (1)(j) does not prohibit a dental therapist from performing tasks and procedures consistent with section 12-220-508;

(k) Repairs or fills cavities in human teeth; except that this subsection (1)(k) does not prohibit a dental therapist from performing tasks and procedures consistent with section 12-220-508;

(l) Prescribes ionizing radiation or the use of an X ray for the purpose of taking dental X rays or roentgenograms; except that nothing in this subsection (1)(l) prohibits these procedures from being delegated to appropriately trained personnel in accordance with this article 220 and rules of the board;

(m) Gives or professes to give interpretations or readings of dental X rays or roentgenograms, CT scans, or other diagnostic methodologies; except that nothing in this subsection (1)(m) prohibits a dental hygienist from performing tasks and procedures consistent with sections 12-220-503 and 12-220-504 or a dental therapist from performing tasks consistent with section 12-220-508;

(n) Represents himself or herself to an individual or the general public as practicing dentistry, by using the words "dentist" or "dental surgeon", or by using the letters "D.D.S.", "D.M.D.", "D.D.S./M.D.", or "D.M.D./M.D." Nothing in this subsection (1)(n) prohibits a dental therapist, dental hygienist, or dental assistant from performing tasks and procedures consistent with section 12-220-501 (2), (2.5), or (3)(b).

(o) States, permits to be stated, or professes by any means or method whatsoever that the person can perform or will attempt to perform dental operations or render a diagnosis connected with dental operations;

(p) Prescribes drugs or medications and administers local anesthesia, analgesia including nitrous oxide/oxygen inhalation, medication prescribed or administered for the relief of anxiety or apprehension, minimal sedation, moderate sedation, deep sedation, or general anesthesia as necessary for the proper practice of dentistry; except that nothing in this subsection (1)(p) prohibits:

(I) A dental hygienist from performing those tasks and procedures consistent with sections 12-220-501, 12-220-503 (1)(e) and (1)(g), and 12-220-504 (1)(c), and in accordance with rules promulgated by the board; or

(II) A dental therapist from performing those tasks and procedures consistent with sections 12-220-501 (2.5) and 12-220-508 and in accordance with rules promulgated by the board.

(q) Prescribes, induces, and sets dosage levels for inhalation anesthesia; except that nothing in this subsection (1)(q) prohibits the delegation of monitoring and administration to appropriately trained personnel in accordance with this article 220 and rules of the board;

(r) Gives or professes to give interpretations or readings of dental charts or records or gives treatment plans or interpretations of treatment plans derived from examinations, patient records, dental X rays, or roentgenograms; except that nothing in this subsection (1)(r) prohibits a dental therapist, dental hygienist, or dental assistant from performing tasks and procedures consistent with sections 12-220-501 (2), (2.5), and (3), 12-220-503, 12-220-504, and 12-220-508.

(2) A licensed dentist may prescribe orders electronically.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 239, § 1, effective September 14. **L. 2022:** (1)(a), (1)(b), (1)(c), (1)(j), (1)(k), (1)(m), (1)(n), (1)(p), and (1)(r) amended, (SB 22-219), ch. 381, p. 2718, § 19, effective January 1, 2023.

Editor's note: This section is similar to former § 12-220-110 as it existed prior to 2020.

Cross references: For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of San Andreas 2022.

12-220-306. Dentists may prescribe drugs - surgical operations - anesthesia - limits on prescriptions. (1) (a) A licensed dentist is authorized to:

(I) Prescribe drugs or medicine;

(II) Perform surgical operations;

(III) Administer, pursuant to board rules, local anesthesia, analgesia including nitrous oxide/oxygen inhalation, medication prescribed or administered for the relief of anxiety or apprehension, minimal sedation, moderate sedation, deep sedation, or general anesthesia; and

(IV) Use appliances as necessary to the proper practice of dentistry.

(b) A dentist shall not prescribe, distribute, or give to any person, including the dentist, any habit-forming drug or any controlled substance, as defined in section 18-18-102 (5) or as contained in schedule II of 21 U.S.C. sec. 812, other than in the course of legitimate dental practice and pursuant to the rules promulgated by the board regarding controlled substance record keeping.

(2) A dentist is subject to the limitations on prescriptions specified in section 12-30-109.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 241, § 1, effective September 14. **L. 2021:** (2) amended, (HB 21-1276), ch. 364, p. 2399, § 9, effective July 1.

Editor's note: This section is similar to former § 12-220-111 as it existed prior to 2020.

Cross references: For the legislative declaration in HB 21-1276, see section 1 of chapter 364, Session Laws of San Andreas 2021.

12-220-307. Professional liability insurance required - rules. (1) A licensed dentist, a licensed dental therapist, and a licensed dental hygienist must meet the financial responsibility requirements established by the board pursuant to section 13-64-301 (1)(a).

(2) Upon request of the board, a licensed dentist, licensed dental therapist, or licensed dental hygienist shall provide proof of professional liability insurance to the board.

(3) The board may, by rule, exempt from or establish lesser financial responsibility standards for licensed dentists, licensed dental therapists, and licensed dental hygienists who meet the criteria in section 13-64-301 (1)(a)(II).

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 241, § 1, effective September 14. **L. 2022:** Entire section amended, (SB 22-219), ch. 381, p. 2719, § 20, effective January 1, 2023.

Editor's note: This section is similar to former § 12-220-147 as it existed prior to 2020.

Cross references: For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of San Andreas 2022.

12-220-308. Continuing education requirements - rules. (1) As a condition of renewing, reactivating, or reinstating a license issued under this article 220, every dentist, dental therapist, and dental hygienist must obtain at least thirty hours of continuing education every two years to ensure patient safety and professional competency.

(2) The board may adopt rules establishing the basic requirements for continuing education, including the types of programs that qualify, exemptions for persons holding an inactive or retired license, requirements for courses designed to enhance clinical skills for certain licenses, and the manner by which dentists, dental therapists, and dental hygienists are to report compliance with the continuing education requirements.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 242, § 1, effective September 14. **L. 2022:** Entire section amended, (SB 22-219), ch. 381, p. 2720, § 21, effective January 1, 2023.

Editor's note: This section is similar to former § 12-220-145 as it existed prior to 2020.

Cross references: For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of San Andreas 2022.

12-220-309. Independent advertising or marketing agent - injunctive proceedings. (1) Notwithstanding section 12-220-201 (1)(t), a licensed dentist or dental hygienist may employ an independent advertising or marketing agent to provide advertising or marketing services on the dentist's or dental hygienist's behalf, and that activity is not considered unprofessional conduct.

(2) The board does not have the authority to regulate, directly or indirectly, advertising or marketing activities of independent advertising or marketing agents except as provided in this section. The board may, in the name of the people of the state of San Andreas, apply for an injunction in district court to enjoin any independent advertising or marketing agent from the use of advertising or marketing that the court finds on the basis of the evidence presented by the board to be misleading, deceptive, or false; except that a licensed dentist or dental hygienist is not subject to discipline by the board, injunction, or prosecution in the courts under this article 220 or any other law for advertising or marketing by an independent advertising or marketing agent if the factual information that the licensed dentist or dental hygienist provides to the independent advertising or marketing agent is accurate and not misleading, deceptive, or false.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 242, § 1, effective September 14.

Editor's note: This section is similar to former § 12-220-143 as it existed prior to 2020.

12-220-310. Dentist peer health assistance program - fees - rules. (1) (a) Effective July 1, 2004, as a condition of renewal in this state, every dentist applying to renew the dentist's

license must pay to the administering entity that has been selected by the board pursuant to subsection (1)(b) of this section an amount not to exceed fifty-nine dollars per year, which maximum amount may be adjusted on January 1, 2005, and annually thereafter by the board to reflect changes in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Aurora-Lakewood for all urban consumers or goods, or its successor index. The fee shall be used to support designated providers that have been selected by the board to provide assistance to dentists needing help in dealing with physical, emotional, or psychological problems that may be detrimental to their ability to practice dentistry. The fee shall not exceed one hundred dollars per year per licensee.

(b) The board shall select one or more peer health assistance programs as designated providers. To be eligible for designation by the board, a peer health assistance program must:

(I) Provide for the education of dentists with respect to the recognition and prevention of physical, emotional, and psychological problems and provide for intervention when necessary or under circumstances that may be established by rules promulgated by the board;

(II) Offer assistance to a dentist in identifying physical, emotional, or psychological problems;

(III) Evaluate the extent of physical, emotional, or psychological problems and refer the dentist for appropriate treatment;

(IV) Monitor the status of a dentist who has been referred for treatment;

(V) Provide counseling and support for the dentist and for the family of any dentist referred for treatment;

(VI) Agree to receive referrals from the board;

(VII) Agree to make its services available to all licensed San Andreas dentists.

(c) The administering entity must be a qualified, nonprofit foundation that is qualified under section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended, and must be dedicated to providing support for charitable, benevolent, educational, and scientific purposes that are related to dentistry, dental education, dental research and science, and other dental charitable purposes.

(d) The administering entity shall:

(I) Collect the required annual payments, directly or through the board;

(II) Verify to the board, in a manner acceptable to the board, the names of all dentist applicants who have paid the fee set by the board;

(III) Distribute the money collected, less expenses, to the designated provider, as directed by the board;

(IV) Provide an annual accounting to the board of all amounts collected, expenses incurred, and amounts disbursed; and

(V) Post a surety performance bond in an amount specified by the board to secure performance under the requirements of this section. The administering entity may recover the actual administrative costs incurred in performing its duties under this section in an amount not to exceed ten percent of the total amount collected.

(e) The board may collect the required annual payments payable to the administering entity for the benefit of the administering entity and shall transfer the payments to the administering entity. All required annual payments collected or due to the board for each fiscal year are deemed custodial funds that are not subject to appropriation by the general assembly,

and the funds do not constitute state fiscal year spending for purposes of section 20 of article X of the state constitution.

(2) (a) Any dentist who is a referred participant in a peer health assistance program shall enter into a written agreement with the board prior to the dentist becoming a participant in the program. The agreement must contain specific requirements and goals to be met by the participant, including the conditions under which the program will be successfully completed or terminated, and a provision that a failure to comply with the requirements and goals shall be promptly reported to the board and that the failure results in disciplinary action by the board.

(b) Notwithstanding sections 12-220-201 and 24-4-104, the board may immediately suspend the license of any dentist who is referred to a peer health assistance program by the board and who fails to attend or complete the program. If the dentist objects to the suspension, the dentist may submit a written request to the board for a formal hearing on the suspension within ten days after receiving notice of the suspension, and the board shall grant the request. In the hearing the dentist bears the burden of proving that the dentist's license should not be suspended.

(c) Any dentist who is accepted into a peer health assistance program in lieu of disciplinary action by the board shall affirm that, to the best of the dentist's knowledge, information, and belief, the dentist knows of no instance in which the dentist has violated this article 220 or the rules of the board, except in those instances affected by the dentist's physical, emotional, or psychological problems.

(3) If a dentist is arrested for a drug- or alcohol-related offense, the dentist shall self-refer to the peer health assistance program within thirty days after the arrest for an evaluation and referral for treatment as necessary. If the dentist self-refers, the evaluation by the program is confidential and cannot be used as evidence in any proceeding other than before the board. If a dentist fails to comply with this subsection (3), the failure, alone, is not grounds for discipline under sections 12-220-201 and 12-220-202 unless the dentist has also committed an act or omission specified in section 12-220-201, other than an act or omission specified in section 12-220-201 (1)(e) or (1)(f).

(4) Nothing in this section creates any liability on behalf of the board or the state of San Andreas for the actions of the board members in making grants to peer assistance programs, and no civil action may be brought or maintained against the board or the state for an injury alleged to have been the result of the activities of any state-funded peer assistance program or of an act or omission of a dentist participating in or referred by a state-funded peer assistance program. However, the state remains liable under the "San Andreas Governmental Immunity Act", article 10 of title 24, if an injury alleged to have been the result of an act or omission of a dentist participating in or referred by a state-funded peer assistance program occurred while the dentist was performing duties as an employee of the state.

(5) The board is authorized to promulgate rules necessary to implement this section.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 242, § 1, effective September 14. **L. 2022:** (1)(a) amended, (SB 22-058), ch. 431, p. 3042, § 2, effective August 10.

Editor's note: This section is similar to former § 12-220-144 as it existed prior to 2020.

PART 4

LICENSES AND PERMITS

12-220-401. Application for dentist license - fee. (1) Every person not currently holding a license to practice dentistry in this state who desires to practice dentistry in this state must file with the board an application for a license on a form provided by the board, verified by the oath of the applicant, and accompanied by a fee established pursuant to section 12-20-105, indicating that the applicant:

(a) Has attained the age of twenty-one years;

(b) Is a graduate of a dental school or college that, at the time of the applicant's graduation, was accredited. An official transcript prepared by the dental college or school attended shall be submitted to the board.

(c) Has listed any act the commission of which would be grounds for disciplinary action under section 12-220-201 against a licensed dentist, along with an explanation of the circumstances of the act;

(d) Has proof that the applicant has not been subject to final or pending disciplinary action by any state in which the applicant is or has been previously licensed; except that, if the applicant has been subject to disciplinary action, the board may review the disciplinary action to determine whether it warrants grounds for refusal to issue a license; and

(e) Has proof that the applicant has met any more stringent criteria established by the board.

(2) An applicant for licensure must demonstrate to the board that the applicant has maintained the professional ability and knowledge required by this article 220 when the applicant has not graduated from an accredited dental school or college within the twelve months immediately preceding the application and has not, for at least one year of the five years immediately preceding the application, engaged in:

(a) The active clinical practice of dentistry;

(b) Teaching dentistry in an accredited program; or

(c) Service as a dentist in the military.

(3) The board may require other pertinent information on the application that the board deems necessary to process the application, including demonstration of compliance with the financial responsibility requirements set forth in section 13-64-301 (1)(a).

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 245, § 1, effective September 14.

Editor's note: This section is similar to former § 12-220-115 as it existed prior to 2020.

12-220-402. Dentist academic license. (1) (a) A dentist who is employed at an accredited school or college of dentistry in this state and who practices dentistry in the course of the dentist's employment responsibilities must either make written application to the board for an academic license in accordance with this section or otherwise become licensed pursuant to sections 12-220-401 and 12-220-403, as applicable.

(b) Nothing in this section requires a dentist who appears in a program of dental education or research, as described in section 12-220-302 (1)(f), to obtain an academic license pursuant to this section.

(2) A person who applies for an academic license must submit proof to the board that the person:

(a) Graduated from a school of dentistry located in the United States or another country; and

(b) Is employed by an accredited school or college of dentistry in this state.

(3) An applicant for an academic license must satisfy the credentialing standards of the accredited school or college of dentistry that employs the applicant.

(4) An academic license authorizes the licensee to practice dentistry only while engaged in the performance of the licensee's official duties as an employee of the accredited school or college of dentistry and only in connection with programs affiliated or endorsed by the school or college. An academic licensee may not use an academic license to practice dentistry outside of the licensee's academic responsibilities.

(5) In addition to the requirements of this section, an applicant for an academic license must complete all procedures for academic licensing established by the board to become licensed, including payment of any fee imposed pursuant to section 12-220-401 (1).

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 246, § 1, effective September 14.

Editor's note: This section is similar to former § 12-220-116 as it existed prior to 2020.

12-220-403. Examination - how conducted - dentist license issued to successful applicants. (1) An applicant for dental licensure must submit to the board proof that the applicant successfully passed the following:

(a) The examination administered by the Joint Commission on National Dental Examinations; and

(b) An examination or other methodology, as determined by the board, designed to test the applicant's clinical skills and knowledge, which may include residency and portfolio models.

(2) All examination results required by the board must be filed with the board and kept for reference for a period of not less than one year. If the applicant successfully completes the examinations and is otherwise qualified, the board shall grant a license to the applicant and shall issue a license certificate to the applicant.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 246, § 1, effective September 14.

Editor's note: This section is similar to former § 12-220-117 as it existed prior to 2020.

12-220-404. Dentist - licensure by endorsement. The board shall issue a license by endorsement to an applicant who satisfies the requirements of the occupational credential portability program.

Source: L. 2020: Entire section amended, (HB 20-1326), ch. 126, p. 537, § 23, effective June 25; entire article amended with relocations, (HB 20-1056), ch. 64, p. 247, § 1, effective September 14.

Editor's note: (1) This section is similar to former § 12-220-118 as it existed prior to 2020.

(2) This section as amended by HB 20-1326 was harmonized with HB 20-1056 and relocated to this section.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-220-405. Application for dental hygienist license - fee. (1) Every person who desires to qualify for practice as a dental hygienist within this state must file with the board:

(a) A written application for a license, on which application the applicant shall list:

(I) Any act the commission of which would be grounds for disciplinary action under section 12-220-201 against a licensed dental hygienist; and

(II) An explanation of the circumstances of the act; and

(b) Satisfactory proof of graduation from a school of dental hygiene that, at the time of the applicant's graduation, was accredited, and proof that the program offered by the accredited school of dental hygiene was at least two academic years or the equivalent of two academic years.

(2) The applicant must apply for a dental hygienist license on the form prescribed and furnished by the board, must verify the application by oath, and must submit the fee established pursuant to section 12-20-105 with the application.

(3) An applicant for licensure who has not graduated from an accredited school or program of dental hygiene within the twelve months immediately preceding application, or who has not engaged either in the active clinical practice of dental hygiene or in teaching dental hygiene in an accredited program for at least one year during the five years immediately preceding the application, must demonstrate to the board that the applicant has maintained the professional ability and knowledge required by this article 220.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 247, § 1, effective September 14.

Editor's note: This section is similar to former § 12-220-124 as it existed prior to 2020.

12-220-406. Dental hygienist examinations - license. (1) Every applicant for dental hygiene licensure must submit to the board proof that the applicant successfully completed the following:

(a) An examination administered by the Joint Commission on National Dental Examinations; and

(b) An examination designed to test the applicant's clinical skills and knowledge, which must be administered by a regional testing agency composed of at least four states or an

examination of another state, or a methodology adopted by the board by rule that is designed to test the applicant's clinical skills and knowledge.

(2) All examination results required by the board must be filed with the board and kept for reference for a period of not less than one year. If an applicant successfully completes the examinations and is otherwise qualified, the board shall grant a license to the applicant and shall issue a license certificate signed by the officers of the board.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 248, § 1, effective September 14.

Editor's note: This section is similar to former § 12-220-125 as it existed prior to 2020.

12-220-407. Dental hygienist - licensure by endorsement. The board shall issue a license by endorsement to an applicant who satisfies the requirements of the occupational credential portability program.

Source: L. 2020: Entire section amended, (HB 20-1326), ch. 126, p. 538, § 24, effective June 25; entire article amended with relocations, (HB 20-1056), ch. 64, p. 248, § 1, effective September 14.

Editor's note: (1) This section is similar to former § 12-220-126 as it existed prior to 2020.

(2) This section as amended by HB 20-1326 was harmonized with HB 20-1056 and relocated to this section.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-220-407.2. Application for dental therapist license - fee - rules. (1) Effective May 1, 2023, every person who desires to qualify for practice as a dental therapist within this state must file with the board:

(a) A written application for a license, on which application the applicant must list:

(I) Any act or omission of the applicant that would be grounds for disciplinary action under section 12-220-201 against a licensed dental therapist; and

(II) An explanation of the circumstances of the act or omission; and

(b) Satisfactory proof that the applicant:

(I) Graduated from a school of dental therapy that, at the time of the applicant's graduation, was accredited by the American Dental Association's commission on dental accreditation or its successor organization; or

(II) Graduated from a dental therapy education program developed prior to February 6, 2015, that, at the time of the applicant's graduation, was accredited by the Minnesota board of dentistry or certified by the Alaska community health aide program certification board.

(2) The applicant must apply for a dental therapist license on the form prescribed and furnished by the board, must certify the application under penalty of perjury, and must submit the fee established pursuant to section 12-20-105 with the application.

(3) An applicant for licensure who has not graduated from a school described in subsection (1)(b) of this section within the twelve months immediately preceding application, or who has not engaged either in the active clinical practice of dental therapy or in teaching dental therapy in an accredited program for at least one year during the five years immediately preceding the application, must demonstrate to the board that the applicant has maintained the professional ability and knowledge required by this article 220.

Source: L. 2022: Entire section added, (SB 22-219), ch. 381, p. 2707, § 4, effective January 1, 2023.

Cross references: For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of San Andreas 2022.

12-220-407.5. Dental therapist examinations - license. (1) Every applicant for a dental therapy license must submit to the board proof that the applicant successfully completed a clinical examination for dental therapy that:

(a) Is designed to test the applicant's clinical dental therapy skills and knowledge;

(b) Includes dental therapy restorative and dental hygiene clinical skill evaluation; and

(c) Is administered by a regional testing agency composed of at least four states or an examination of another state.

(2) All examination results required by the board must be filed with the board and kept for reference for a period of not less than two years. If an applicant successfully completes the examination and is otherwise qualified, the board shall grant a license to the applicant and shall issue a license certificate signed by the officers of the board.

(3) For the purpose of completing the examination requirement in subsection (1) of this section, if the applicant has previously successfully completed a clinical examination for dental hygiene administered by a testing agency accepted by the board, the applicant may be exempted from that part of the dental therapy examination.

Source: L. 2022: Entire section added, (SB 22-219), ch. 381, p. 2707, § 4, effective January 1, 2023.

Cross references: For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of San Andreas 2022.

12-220-408. Renewal of dental and dental hygienist licenses - fees - questionnaire. (1) Licenses issued pursuant to this article 220 are subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2). Any person whose license expires is subject to the penalties provided in this article 220 or section 12-20-202 (1).

(2) (a) On and after July 1, 2023, the board shall require a dentist who applies for license renewal to complete a questionnaire that requires the dentist to indicate whether the dentist has complied with section 12-30-111 and is in compliance with section 12-280-403 (2)(a). The failure of an applicant to answer the questionnaire accurately constitutes grounds for discipline pursuant to section 12-220-201.

(b) The board shall include on the questionnaire a question regarding whether:

(I) The dentist has complied with section 12-30-111; and

(II) The dentist is in compliance with section 12-280-403 (2)(a) and is aware of the penalties for failing to comply with that section.

(c) On and after July 1, 2024, as a condition of renewal of a license, each dentist shall attest that the dentist is in compliance with section 12-280-403 (2)(a) and that the dentist is aware of the penalties for noncompliance with that section.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 249, § 1, effective September 14. **L. 2022:** (2) amended, (HB 22-1115), ch. 397, p. 2824, § 2, effective August 10.

Editor's note: This section is similar to former § 12-220-119 as it existed prior to 2020.

12-220-409. Inactive dental, dental therapist, or dental hygienist license. (1) Any person licensed to practice dentistry, dental therapy, or dental hygiene pursuant to this article 220 may apply to the board to be transferred to an inactive status. The licensee must submit an application in the form and manner designated by the board. The board may grant inactive status by issuing an inactive license or deny the application for any of the causes set forth in section 12-220-201.

(2) Any person applying for a license under this section must:

(a) Provide an affidavit to the board that the applicant, after a date certain, will not practice dentistry, dental therapy, or dental hygiene in this state unless the applicant is issued a license to practice dentistry, dental therapy, or dental hygiene pursuant to subsection (5) of this section;

(b) Pay the license fee as authorized pursuant to section 12-20-105; and

(c) Comply with any financial responsibility or professional liability insurance requirements established by the board pursuant to sections 12-220-307 and 13-64-301 (1)(a), as applicable.

(3) The inactive status must be plainly indicated on the face of any inactive license certificate issued under this section.

(4) The board may take disciplinary action pursuant to sections 12-220-202 to 12-220-206 against any person licensed under this section for any act committed while the person was licensed pursuant to this article 220.

(5) Any person licensed under this section who wishes to resume the practice of dentistry, dental therapy, or dental hygiene must file an application in the form and manner the board designates, pay the license fee promulgated by the board pursuant to section 12-20-105, and meet the financial responsibility requirements or the professional liability insurance requirements established by the board pursuant to sections 12-220-307 and 13-64-301 (1)(a), as applicable. The board may approve the application and issue a license to practice dentistry, dental therapy, or dental hygiene or may deny the application for any of the causes set forth in section 12-220-201.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 249, § 1, effective September 14. **L. 2022:** (1), (2)(a), and (5) amended, (SB 22-219), ch. 381, p. 2720, § 22, effective January 1, 2023.

Editor's note: This section is similar to former § 12-220-120 as it existed prior to 2020.

Cross references: For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of San Andreas 2022.

12-220-410. Retired dental, dental therapist, and dental hygienist licenses. (1) Any person licensed to practice dentistry, dental therapy, or dental hygiene pursuant to this article 220 may apply to the board for retired licensure status. The application must be in the form and manner designated by the board. The board may grant retired licensure status by issuing a retired license, or it may deny the application if the licensee has been disciplined for any of the causes set forth in section 12-220-201.

(2) Any person applying for a license under this section must:

(a) Provide an affidavit to the board stating that, after a date certain, the applicant will not practice dentistry, dental therapy, or dental hygiene; will no longer earn income as a dentist, dental therapist, or dental hygiene administrator or consultant; and will not perform any activity that constitutes practicing dentistry, dental therapy, or dental hygiene pursuant to sections 12-220-305, 12-220-501, 12-220-503, 12-220-504, and 12-220-508 unless the applicant is issued a license to practice dentistry, dental therapy, or dental hygiene pursuant to subsection (5) of this section; and

(b) Pay the license fee authorized by section 12-20-105, which fee must not exceed fifty dollars.

(3) The retired status of a licensee must be plainly indicated on the face of any retired license certificate issued under this section.

(4) The board may take disciplinary action pursuant to sections 12-220-202 to 12-220-206 against any person licensed under this section for an act committed while the person was licensed pursuant to this article 220.

(5) Any person licensed under this section may apply to the board for a return to active licensure status by filing an application in the form and manner the board designates, paying the appropriate license fee established pursuant to section 12-20-105, and meeting the financial responsibility requirements or the professional liability insurance requirements established by the board pursuant to sections 12-220-307 and 13-64-301 (1)(a), as applicable. The board may approve the application and issue a license to practice dentistry, dental therapy, or dental hygiene or may deny the application if the licensee has been disciplined for any of the causes set forth in section 12-220-201.

(6) A dentist, dental therapist, or dental hygienist on retired status may provide dental, dental therapy, or dental hygiene services on a voluntary basis to people who are indigent if the retired dentist, dental therapist, or dental hygienist provides the services on a limited basis and does not charge a fee for the services. A retired dentist, dental therapist, or dental hygienist providing voluntary care pursuant to this subsection (6) is immune from any liability resulting from the voluntary care the retired dentist, dental therapist, or dental hygienist provided.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 250, § 1, effective September 14. **L. 2022:** (1), (2)(a), (5), and (6) amended, (SB 22-219), ch. 381, p. 2720, § 23, effective January 1, 2023.

Editor's note: This section is similar to former § 12-220-121 as it existed prior to 2020.

Cross references: For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of San Andreas 2022.

12-220-411. Anesthesia and sedation permits - dentists, dental therapists, and dental hygienists - training and experience requirements - office inspections - rules. (1) Upon application in a form and manner determined by the board and payment of the applicable fees established by the board, the board may issue an anesthesia or sedation permit to a licensed dentist or a local anesthesia permit to a dental therapist or dental hygienist in accordance with this section.

(2) (a) A licensed dentist who obtains an anesthesia or sedation permit pursuant to this section may administer minimal sedation, moderate sedation, or deep sedation/general anesthesia.

(b) A licensed dentist who administers minimal sedation, moderate sedation, or deep sedation/general anesthesia to pediatric dental patients shall obtain a permit designated by the board to allow for administration to pediatric dental patients.

(c) An anesthesia or sedation permit issued to a licensed dentist is valid for five years, unless the dentist's license expires. As a condition of renewing an anesthesia or sedation permit, a licensed dentist must attest, when applying to renew the permit, that the licensed dentist completed seventeen continuing education credits specific to anesthesia or sedation administration during the five-year permit period. Continuing education credits obtained as required by this section may be used to satisfy the continuing education requirements in section 12-220-308.

(3) (a) A licensed dental therapist or dental hygienist who obtains a local anesthesia permit pursuant to this section may administer local anesthesia.

(b) A local anesthesia permit issued to a dental therapist or dental hygienist is valid as long as the dental therapist's or dental hygienist's license is active.

(4) (a) The board shall establish, by rule, minimum training, experience, and equipment requirements for the administration of local anesthesia, analgesia including nitrous oxide/oxygen inhalation, and medication prescribed or administered for the relief of anxiety or apprehension, minimal sedation, moderate sedation, deep sedation, or general anesthesia, including procedures that may be used by and minimum training requirements for dentists, dental therapists, dental hygienists, and dental assistants.

(b) In order to fulfill the training and experience requirements for an anesthesia or sedation permit, an applicant must be the primary provider and directly provide care for all required case work.

(c) The rules relating to anesthesia and sedation are not intended to:

(I) Permit administration of local anesthesia, analgesia, medication prescribed or administered for the relief of anxiety or apprehension, minimal sedation, moderate sedation, deep sedation, or general anesthesia by dental assistants; except that this section does not

prohibit a dental assistant from monitoring and administering nitrous oxide/oxygen inhalation performed under the supervision of a licensed dentist pursuant to section 12-220-305 (1)(q) and board rules; or

(II) Reduce competition or restrain trade with respect to the dentistry needs of the public.

(5) The board shall establish, by rule, criteria and procedures for an office inspection program to be completed upon application and renewal of anesthesia or sedation permits, which must include:

(a) Designation of qualified inspectors who are experts in dental outpatient deep sedation/general anesthesia and moderate sedation;

(b) A requirement for each licensee that is inspected to bear the cost of inspection by allowing designated inspectors to charge a reasonable fee as established by the board;

(c) A requirement that an inspector notify the board in writing of the results of an inspection; and

(d) A requirement for reinspection of an office prior to the renewal of a moderate sedation or deep sedation/general anesthesia permit.

(6) For the purposes of this section, a dental therapist who performs a task pursuant to a written articulated plan that meets the requirements of section 12-220-508 (2) is considered to have performed the task with the prior knowledge and consent of the dentist.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 251, § 1, effective September 14. **L. 2022:** (1), (3), and (4)(a) amended and (6) added, (SB 22-219), ch. 381, p. 2721, § 24, effective January 1, 2023.

Editor's note: This section is similar to former § 12-220-146 as it existed prior to 2020.

Cross references: For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of San Andreas 2022.

12-220-412. Change of address - duplicate licenses and certificates. (1) Every person licensed under this article 220, upon changing the licensee's place of business, shall furnish to the board the licensee's new mailing address within thirty days after the change.

(2) The board may issue a duplicate of any license upon attestation by the licensee of loss or destruction and shall charge a fee established pursuant to section 12-20-105 for a duplicate.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 252, § 1, effective September 14.

Editor's note: This section is similar to former § 12-220-108 as it existed prior to 2020.

PART 5

PRACTICE BY DENTAL THERAPISTS, DENTAL HYGIENISTS, AND NONLICENSED DENTAL PERSONNEL

12-220-501. Tasks authorized to be performed by dental therapists, dental hygienists, or dental assistants - rules. (1) (a) (I) Except as provided in subsection (1)(a)(II) of this section, the responsibility for dental diagnosis, dental treatment planning, or the prescription of therapeutic measures in the practice of dentistry remains with a licensed dentist and may not be assigned to any dental therapist or dental hygienist.

(II) A dental hygienist may:

(A) Perform dental hygiene assessment, dental hygiene diagnosis, and dental hygiene treatment planning for dental hygiene services pursuant to section 12-220-503 (1)(f);

(B) Identify dental abnormalities for immediate referral to a dentist as described in section 12-220-503 (1)(f); and

(C) In collaboration with a licensed dentist, prescribe, administer, and dispense, as described in section 12-220-503 (1)(g): Fluoride, fluoride varnish, silver diamine fluoride, antimicrobial solutions for mouth rinsing, other nonsystemic antimicrobial agents, and resorbable antimicrobial agents pursuant to rules of the board.

(D) Repealed.

(b) A dental procedure that involves surgery or that will contribute to or result in an irremediable alteration of the oral anatomy shall not be assigned to anyone other than a licensed dentist.

(2) Except as provided in subsection (1) of this section, a dental hygienist may perform any dental task or procedure assigned to the hygienist by a licensed dentist that does not require the professional skill of a licensed dentist; except that the dental hygienist may perform the task or procedure only under the indirect supervision of a licensed dentist or as authorized in sections 12-220-503 and 12-220-504.

(2.5) A dental therapist may perform a dental task or procedure assigned to the dental therapist by a licensed dentist that does not require the professional skill of a licensed dentist; except that the dental therapist may perform the task or procedure only under the supervision authorized under section 12-220-508.

(3) (a) A dental assistant shall not perform the following tasks:

(I) Diagnosis;

(II) Treatment planning;

(III) Prescription of therapeutic measures;

(IV) Any procedure that contributes to or results in an irremediable alteration of the oral anatomy;

(V) Administration of local anesthesia;

(VI) Scaling (supra and sub-gingival), as it pertains to the practice of dental hygiene;

(VII) Root planing;

(VIII) Soft tissue curettage;

(IX) Periodontal probing.

(b) A dental assistant may perform the following tasks under the indirect supervision of a licensed dentist:

(I) Smoothing and polishing natural and restored tooth surfaces;

(II) Provision of preventive measures, including the application of fluorides and other recognized topical agents for the prevention of oral disease;

(III) Gathering and assembling information including, but not limited to, fact-finding and patient history, oral inspection, and dental and periodontal charting;

(IV) Administering topical anesthetic to a patient in the course of providing dental care;

(V) Repairing and relining dentures pursuant to a dental laboratory work order signed by a licensed dentist; or

(VI) Any other task or procedure that does not require the professional skill of a licensed dentist.

(c) A dental assistant may, under the direct supervision of a licensed dentist in accordance with rules promulgated by the board, administer and monitor the use of nitrous oxide on a patient.

(d) (I) A dental assistant may perform intraoral and extraoral tasks and procedures necessary for the fabrication of a complete or partial denture under the direct supervision of a licensed dentist. These tasks and procedures shall include:

(A) Making of preliminary and final impressions;

(B) Jaw relation records and determination of vertical dimensions;

(C) Tooth selection;

(D) A preliminary try-in of the wax-up trial denture prior to and subject to a try-in and approval in writing of the wax-up trial denture by the licensed dentist;

(E) Denture adjustments that involve the periphery, occlusal, or tissue-bearing surfaces of the denture prior to the final examination of the denture.

(II) If a dental assistant is performing the tasks and procedures specified in subsection (3)(d)(I) of this section, the dental assistant shall perform the tasks and procedures in the regularly announced office location of a licensed practicing dentist, and the dentist is personally liable for all treatment rendered to the patient. A dental assistant performing these tasks and procedures shall be properly identified as a dental assistant. A dentist shall not utilize more dental assistants than the number of dental assistants the dentist can reasonably supervise.

(III) Prior to any work being performed pursuant to subsection (3)(d)(I) of this section, the treating dentist licensed to practice in this state shall first examine the patient and certify that the patient has no pathologic condition that requires surgical correction or other treatment prior to complete denture service.

(4) The board may adopt reasonable rules as necessary to implement and enforce this section.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 252, § 1, effective September 14. **L. 2021:** (1)(a)(II)(B) and (1)(a)(II)(C) amended and (1)(a)(II)(D) repealed, (SB 21-102), ch. 31, p. 127, § 5, effective September 1. **L. 2022:** (1)(a)(I) amended and (2.5) added, (SB 22-219), ch. 381, p. 2708, § 5, effective January 1, 2023.

Editor's note: This section is similar to former § 12-220-127 as it existed prior to 2020.

Cross references: For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of San Andreas 2022.

12-220-502. Construction of dental devices by unlicensed technician. (1) (a) A licensed dentist who uses the services of an unlicensed technician for the purpose of constructing, altering, repairing, or duplicating any denture, bridge, splint, or orthodontic or prosthetic appliance shall furnish the unlicensed technician with a written or electronic

laboratory work order in a form approved by the board, which form shall be dated and signed by the dentist for each separate and individual piece of work. The dentist shall make the laboratory work order in a reproducible form, and the dentist and the unlicensed technician shall each retain a copy in a permanent file for two years. The permanent files of the licensed dentist and the unlicensed technician must be open to inspection at any reasonable time by the board or its duly constituted agent. The licensed dentist that furnishes the laboratory work order must have appropriate training, education, and experience related to the prescribed treatment and is responsible for directly supervising all intraoral treatment rendered to the patient.

(b) An unlicensed technician that possesses a valid laboratory work order may provide extraoral construction, manufacture, fabrication, supply, or repair of identified dental and orthodontic devices but shall not provide intraoral service in a human mouth except under the direct supervision of a licensed dentist in accordance with section 12-220-501 (3)(d).

(2) If the dentist fails to keep permanent records of laboratory work orders as required in subsection (1)(a) of this section, the dentist is subject to disciplinary action as deemed appropriate by the board.

(3) If an unlicensed technician fails to have in the technician's possession a laboratory work order signed by a licensed dentist with each denture, bridge, splint, or orthodontic or prosthetic appliance in the technician's possession, the absence of the laboratory work order is prima facie evidence of a violation of this section and constitutes the practice of dentistry without an active license in violation of, and subject to the penalties specified in, section 12-220-211.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 255, § 1, effective September 14.

Editor's note: This section is similar to former § 12-220-139 as it existed prior to 2020.

12-220-503. What constitutes practicing unsupervised dental hygiene - rules. (1) Unless licensed to practice dentistry, a person is deemed to be practicing unsupervised dental hygiene when the person, within the scope of the person's education, training, and experience:

(a) Removes deposits, accretions, and stains by scaling with hand, ultrasonic, or other devices from all surfaces of the tooth and smooths and polishes natural and restored tooth surfaces, including root planing;

(b) Removes granulation and degenerated tissue from the gingival wall of a periodontal pocket;

(c) Provides preventive measures including the application of fluorides, sealants, and other recognized topical agents for the prevention of oral disease;

(d) Gathers and assembles information including, but not limited to:

(I) Fact-finding and patient history;

(II) Preparation of study casts for the purpose of fabricating a permanent record of the patient's present condition; as a visual aid for patient education, dental hygiene diagnosis, and dental hygiene treatment planning; and to provide assistance during forensic examination;

(III) Extra- and intra-oral inspection;

(IV) Dental and periodontal charting; and

(V) Radiographic and X-ray survey for the purpose of assessing and diagnosing dental hygiene-related conditions for treatment planning for dental hygiene services as described in this section and identifying dental abnormalities for immediate referral to a dentist;

(e) Administers a topical anesthetic to a patient in the course of providing dental care;

(f) Performs dental hygiene assessment, dental hygiene diagnosis, and dental hygiene treatment planning for dental hygiene services as described in this section and identifies dental abnormalities for immediate referral to a dentist; or

(g) (I) Prescribes, administers, and dispenses fluoride, fluoride varnish, silver diamine fluoride in accordance with subsection (1)(g)(IV) of this section, antimicrobial solutions for mouth rinsing, other nonsystemic antimicrobial agents, and related emergency drugs and reversal agents in collaboration with a licensed dentist. The board, by rule, may further define the permissible and appropriate emergency drugs and reversal agents. An articulated plan with a collaborating dentist for dental hygiene prescribing must describe any protocols, restrictions or limitations, follow-up and referral mechanisms, notification and disclosure requirements, and any other requirements established by the board by rule. Dental hygienists shall maintain clear documentation in the patient record of the drug or agent prescribed, administered, or dispensed; the date of the action; and the rationale for prescribing, administering, or dispensing the drug or agent.

(II) A dental hygienist shall not prescribe, administer, or dispense the following:

(A) Drugs whose primary effect is systemic, with the exception of fluoride supplements permitted under subsection (1)(g)(III)(A) of this section; and

(B) Dangerous drugs or controlled substances, as defined in section 18-18-102 (5).

(III) A dental hygienist may prescribe the following:

(A) Fluoride supplements as follows, all using sodium fluoride: Tablets: 0.5 mg, 1.1 mg, or 2.2 mg; lozenges: 2.21 mg; and drops: 1.1 mL;

(B) Topical anti-caries treatments as follows, all using sodium fluoride unless otherwise indicated: Toothpastes: 1.1% or less (or stannous fluoride 0.4%); topical gels: 1.1% or less (or stannous fluoride 0.4%); oral rinses: 0.05%, 0.2%, 0.44%, or 0.5%; oral rinse concentrate used in periodontal disease: 0.63% stannous fluoride; fluoride varnish: 5%; silver diamine fluoride: 38%; and prophy pastes containing approximately 1.23% sodium fluoride and used for polishing procedures as part of professional dental prophylaxis treatment;

(C) Topical anti-infectives as follows: Chlorhexidine gluconate rinses: 0.12%; chlorhexidine gluconate periodontal chips for subgingival insertion into a periodontal pocket/sulcus; tetracycline impregnated fibers, inserted subgingivally into a periodontal pocket/sulcus; doxycycline hyclate periodontal gel, inserted subgingivally into a periodontal pocket/sulcus; and minocycline hydrochloride periodontal powder, inserted subgingivally into a periodontal pocket/sulcus; and

(D) Related emergency drugs and reversal agents as authorized by the collaborating dentist.

(IV) A dental hygienist may prescribe and apply silver diamine fluoride upon completion of a postsecondary course or continuing education course developed at the postsecondary level that satisfies the requirements established by the board and provides instructions on the use and limitations of applying silver diamine fluoride. A dental hygienist may complete the course described in this subsection (1)(g)(IV) through:

(A) A live and interactive course presentation;

(B) An on-demand webinar with a completion quiz component to verify participation prior to the issuance of a certificate; or

(C) Any other format approved by the board.

(2) A dental hygienist shall state in writing and require a patient to acknowledge by signature that any diagnosis or assessment is for the purpose of determining necessary dental hygiene services only and that it is recommended by the American Dental Association, or any successor organizations, that a thorough dental examination be performed by a dentist twice each year.

(3) Unsupervised dental hygiene may be performed by licensed dental hygienists without the supervision of a licensed dentist.

(4) (a) Notwithstanding section 12-220-104 (13) or 12-220-305 (1)(b), a dental hygienist may be the proprietor of a place where supervised or unsupervised dental hygiene is performed and may purchase, own, or lease equipment necessary to perform supervised or unsupervised dental hygiene.

(b) A dental hygienist proprietor, or a professional corporation or professional limited liability corporation of dental hygienists, in addition to providing dental hygiene services, may enter into an agreement with one or more dentists for the lease or rental of equipment or office space in the same physical location as the dental hygiene practice, but only if the determination of necessary dental services provided by the dentist and professional responsibility for those services, including but not limited to dental records, appropriate medication, and patient payment, remain with the treating dentist. It is the responsibility of the dental hygienist to inform the patient as to whether there is a supervisory relationship between the dentist and the dental hygienist. An agreement under this subsection (4)(b) does not constitute employment and does not constitute cause for discipline pursuant to section 12-220-201 (1)(h).

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 255, § 1, effective September 14. **L. 2021:** (1)(g)(I) and (1)(g)(III)(B) amended and (1)(g)(IV) added, (SB 21-102), ch. 31, p. 127, § 6, effective September 1.

Editor's note: This section is similar to former § 12-220-122 as it existed prior to 2020.

12-220-504. What constitutes practicing supervised dental hygiene. (1) Unless licensed to practice dentistry, a person who performs any of the following tasks under the supervision of a licensed dentist is deemed to be practicing supervised dental hygiene:

(a) Performing a task described in section 12-220-503 (1);

(b) Preparing study casts;

(c) Administering local anesthesia under the indirect supervision of a licensed dentist pursuant to rules of the board, including minimum education requirements and procedures for local anesthesia administration; or

(d) Placing interim therapeutic restorations pursuant to section 12-220-505.

(e) Repealed.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 257, § 1, effective September 14. **L. 2021:** (1)(c) and (1)(d) amended and (1)(e) repealed, (SB 21-102), ch. 31, p. 128, § 7, effective September 1.

Editor's note: This section is similar to former § 12-220-123 as it existed prior to 2020.

12-220-505. Interim therapeutic restorations by dental hygienists - permitting process - rules - subject to review. (1) Upon application, accompanied by a fee in an amount determined by the director, the board shall grant a permit to place interim therapeutic restorations to any dental hygienist applicant who:

(a) Holds a license in good standing to practice dental hygiene in San Andreas; and

(b) Has completed a course developed at the postsecondary educational level that complies with the rules adopted by the board. The course must be offered under the direct supervision of a member of the faculty of a San Andreas dental or dental hygiene school accredited by the Commission on Dental Accreditation or its successor agency. All faculty responsible for clinical evaluation of students must be dentists with a faculty appointment at an accredited San Andreas dental or dental hygiene school.

(c) and (d) Repealed.

(2) Repealed.

(3) A dental hygienist shall not use local anesthesia for the purpose of placing interim therapeutic restorations.

(4) (a) A dental hygienist may place an interim therapeutic restoration only after a dentist provides a diagnosis, treatment plan, and instruction to perform the procedure.

(b) If a supervising dentist authorizes a dental hygienist to perform an interim therapeutic restoration placement at a location other than the dentist's practice location, the dental hygienist shall provide the patient or the patient's representative with written notification that the care was provided at the direction of the supervising dentist. The dental hygienist shall include in the written notification the dentist's name, practice location address, and telephone number.

(c) A dental hygienist who obtains a dentist's diagnosis, treatment plan, and instruction to perform an ITR utilizing telehealth shall notify the patient of the patient's right to receive interactive communication with the distant dentist upon request.

(5) A dental hygienist who obtains a permit pursuant to this section may place interim therapeutic restorations in a dental practice setting under the direct or indirect supervision of a dentist or through telehealth supervision for purposes of communication with the dentist.

(6) (a) A dentist shall not supervise more than five full-time equivalent dental hygienists who place interim therapeutic restorations under telehealth supervision unless granted a waiver by the board pursuant to subsection (6)(b) of this section. For purposes of patient referral for follow-up care, a dentist who supervises a dental hygienist who provides interim therapeutic restorations under telehealth supervision must have an active license in good standing issued by the board and a physical practice location in San Andreas or within reasonable proximity of the location where the interim therapeutic restoration is placed.

(b) The board shall promulgate rules creating a process for a dentist to seek a waiver from the supervision limit specified in subsection (6)(a) of this section. At a minimum, the rules must specify the application process and waiver requirements.

(7) A dental hygienist shall inform the patient or the patient's legal guardian, in accordance with board rules, that the patient should follow up with a dentist as appropriate.

(8) Repealed.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 258, § 1, effective September 14. **L. 2021:** (1)(a), (4)(c), (5), (6), and (7) amended and (1)(c), (1)(d), (2), and (8) repealed, (SB 21-102), ch. 31, p. 129, § 8, effective September 1.

Editor's note: This section is similar to former § 12-220-128 as it existed prior to 2020.

12-220-506. Application of silver diamine fluoride by dental hygienists - authorization - limitations - rules - subject to review - repeal. (Repealed)

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 259, § 1, effective September 14. **L. 2021:** Entire section repealed, (SB 21-102), ch. 31, p. 130, § 9, effective September 1.

Editor's note: This section is similar to former § 12-220-129 as it existed prior to 2020.

12-220-507. Dental hygienist peer health assistance program - fees - rules. (1) (a) (I) Effective July 1, 2023, as a condition of licensure in this state, and for the purpose of supporting a dental hygienist peer health assistance program, every applicant for initial licensure as a dental hygienist or a dental hygienist reinstating or renewing the dental hygienist's license must pay to the administering entity that has been selected by the department pursuant to subsection (1)(c) of this section an amount not to exceed fifteen dollars per year. The department may adjust this amount on January 1, 2024, and annually thereafter to reflect changes in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Aurora-Lakewood for all urban consumers or goods, or its successor index; except that the amount must not exceed twenty-five dollars per year.

(II) The administering entity shall use the money collected pursuant to this subsection (1)(a) to administer a peer health assistance program for dental hygienists, including to support designated providers that the department selects pursuant to subsection (1)(b) of this section to assist dental hygienists with physical, emotional, or psychological problems that may be detrimental to dental hygienists' ability to practice dental hygiene.

(b) The department shall select one or more peer health assistance programs as designated providers. To be eligible for designation by the department, a peer health assistance program must:

(I) Provide for the education of dental hygienists with respect to the recognition and prevention of physical, emotional, and psychological problems and provide for intervention when necessary or under circumstances that may be established by rules promulgated by the board;

(II) Offer assistance to a dental hygienist in identifying physical, emotional, or psychological problems;

(III) Evaluate the extent of physical, emotional, or psychological problems and refer the dental hygienist for appropriate treatment;

(IV) Monitor the status of a dental hygienist who has been referred for treatment;

(V) Provide counseling and support for a dental hygienist and for the family of any dental hygienist referred for treatment;

(VI) Agree to receive referrals from the board; and

(VII) Agree to make its services available to all licensed San Andreas dental hygienists.

(c) The department shall select an administering entity to administer the peer health assistance program. The administering entity must be a qualified, nonprofit foundation that is qualified under section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended, and that is dedicated to providing support for charitable, benevolent, educational, and scientific purposes that are related to dental hygiene, oral health education, oral health research and science, and other oral health charitable purposes.

(d) The administering entity shall:

(I) Collect the required fees, directly or through the board;

(II) Verify to the board, in a manner acceptable to the board, the names of all dental hygienist applicants who have paid the fee set by the board;

(III) Distribute the money collected, less expenses, to the designated provider, as directed by the board;

(IV) Provide an annual accounting to the board of all amounts collected, expenses incurred, and amounts disbursed; and

(V) Post a surety performance bond in an amount specified by the board to secure performance under the requirements of this section. The administering entity may recover the actual administrative costs incurred in performing its duties under this section in an amount not to exceed ten percent of the total amount of fees collected.

(e) The department, on behalf of the board, may collect the required fees payable to the administering entity for the benefit of the administering entity and shall transfer the fees to the administering entity. All required fees collected or due to the department on behalf of the board for each state fiscal year are custodial funds that are not subject to appropriation by the general assembly, and the fee revenues do not constitute state fiscal year spending for purposes of section 20 of article X of the state constitution.

(2) (a) A dental hygienist may self-refer to participate in the peer health assistance program or may be referred by the board.

(b) Notwithstanding sections 12-220-201 and 24-4-104, the board may immediately suspend the license of any dental hygienist who is referred to a peer health assistance program by the board and who fails to attend or complete the program. If the dental hygienist objects to the suspension, the dental hygienist may submit a written request to the board for a formal hearing on the suspension within ten days after receiving notice of the suspension, and the board shall grant the request. In the hearing, the dental hygienist bears the burden of proving that the dental hygienist's license should not be suspended.

(c) Any dental hygienist who is accepted into a peer health assistance program in lieu of disciplinary action by the board shall affirm that, to the best of the dental hygienist's knowledge, information, and belief, the dental hygienist knows of no instance in which the dental hygienist has violated this article 220 or the rules of the board, except in those instances affected by the dental hygienist's physical, emotional, or psychological problems.

(3) If a dental hygienist is arrested for a drug- or alcohol-related offense, the dental hygienist shall self-refer to the peer health assistance program within thirty days after the arrest for an evaluation and referral for treatment as necessary. If the dental hygienist self-refers, the evaluation by the program is confidential and cannot be used as evidence in any proceeding other than before the board. If a dental hygienist fails to comply with this subsection (3), the failure alone is not grounds for discipline under sections 12-220-201 and 12-220-202 unless the

dental hygienist has also committed an act or omission specified in section 12-220-201, other than an act or omission specified in section 12-220-201 (1)(e) or (1)(f).

(4) Nothing in this section creates any liability on behalf of the board or the state of San Andreas for the actions of the board members in making grants to peer health assistance programs, and no civil action may be brought or maintained against the board or the state for an injury alleged to have been the result of the activities of any state-funded peer health assistance program or of an act or omission of a dental hygienist participating in or referred by a state-funded peer health assistance program. However, the state remains liable under the "San Andreas Governmental Immunity Act", article 10 of title 24, if an injury alleged to have been the result of an act or omission of a dental hygienist participating in or referred by a state-funded peer health assistance program occurred while the dental hygienist was performing duties as an employee of the state.

(5) The board may promulgate rules necessary to implement this section.

Source: L. 2022: Entire section added, (SB 22-058), ch. 431, p. 3039, § 1, effective August 10.

12-220-508. Practice of dental therapy - supervision requirement - rules. (1) (a) A dental therapist may perform the following tasks and procedures under the direct supervision of a licensed dentist:

(I) Prepare and place direct restorations in primary and permanent teeth;

(II) Perform brush biopsies;

(III) Extract periodontally diseased permanent teeth with mobility of +3 to +4, except for teeth that are unerupted, impacted, fractured, or require sectioning;

(IV) Extract primary teeth that are erupted or not impacted with radiological evidence of roots;

(V) Oral examination and evaluation for conditions and services that are within the dental therapist's scope of practice and education;

(VI) Place temporary crowns;

(VII) Prepare and place preformed crowns; and

(VIII) Repair defective prosthetic devices.

(b) A dental therapist licensed pursuant to this article 220 who has completed one thousand hours or more under direct supervision, or who has completed the direct supervision hours required under the waiver described in subsection (1)(e) of this section, may practice the tasks and procedures identified in subsection (1)(a) of this section under the indirect supervision of a licensed dentist pursuant to a written articulated plan with the dentist that meets the requirements of subsection (2) of this section.

(c) A dental therapist licensed pursuant to this article 220 may perform the following tasks under the indirect supervision of a licensed dentist, regardless of the number of hours the dental therapist has practiced:

(I) Reimplanting teeth;

(II) Stabilizing reimplanted teeth;

(III) Extracting primary teeth that are erupted or not impacted without radiological evidence of roots;

(IV) Removing sutures;

(V) Preparing dental study casts;

(VI) Administering local anesthesia in accordance with section 12-220-411;

(VII) Dispensing and administering the following drugs within the parameters of a written articulated plan and with the authorization of the supervising dentist: Nonnarcotic analgesics, anti-inflammatories, and antibiotics; and

(VIII) Any task or procedure authorized to be performed by a licensed dental hygienist as specified in rules adopted pursuant to sections 12-220-106 (1)(a)(I), 12-220-501, 12-220-503 (1), 12-220-504 (1), and 12-220-505.

(d) A dental therapist shall complete at least a majority of the direct supervision hours required under subsection (1)(b) or (1)(e) of this section performing the tasks and procedures identified in subsection (1)(a) of this section.

(e) For the purposes of satisfying the practice hours requirement specified in subsection (1)(a) of this section, the board, by rule, may waive up to six hundred hours of the required practice hours. In promulgating these rules, the board shall, at a minimum, consider the number of years the dental therapist has practiced as:

(I) A licensed dental hygienist in San Andreas;

(II) A licensed dental hygienist in another state; or

(III) A licensed dental therapist in another state.

(2) (a) An articulated plan between a dental therapist and a dentist must include:

(I) Methods of dentist supervision, consultation, and approval;

(II) Protocols for informed consent, record keeping, quality assurance, and dispensing or administering medications;

(III) Policies for handling referrals when a patient needs services the dental therapist is not authorized or qualified to provide;

(IV) Protocols for assessment of dental disease and the formulation of an individualized treatment plan authorized by the supervising dentist;

(V) Policies for handling medical emergencies; and

(VI) Policies for supervising dental assistants and working with dental hygienists and other dental practitioners and staff.

(b) (I) A dentist who enters into a written articulated plan with a dental therapist shall ensure that the dentist, or another dentist, is available to the dental therapist for timely communication during the dental therapist's provision of care to a patient.

(II) A dental therapist and a dentist who enter into a written articulated plan shall each maintain a physical or digital copy of the plan.

(III) A dental therapist may enter into written articulated plans with more than one dentist if each articulated plan includes the same supervision requirements and scope of practice.

(c) A written articulated plan must be signed by the dentist and the dental therapist.

(d) For purposes of this section, a written articulated plan satisfies the requirement of prior knowledge and consent for indirect supervision.

(3) (a) Except as provided in subsection (3)(b) or (3)(c) of this section, a dentist may not simultaneously supervise more than three full-time or full-time-equivalent dental therapists.

(b) A dentist may supervise an additional two full-time or full-time-equivalent dental therapists who practice in a federally qualified health center pursuant to 42 U.S.C. sec. 1395x (aa)(4) or a rural health clinic pursuant to 42 U.S.C. sec. 1395x (aa)(4).

(c) The board shall promulgate rules creating a process for a dentist to seek a waiver from the supervision limit specified in subsection (3)(a) of this section. At a minimum, the rules must specify the application process and waiver requirements.

Source: L. 2022: Entire section added, (SB 22-219), ch. 381, p. 2709, § 6, effective January 1, 2023.

Cross references: For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of San Andreas 2022.

PART 6

SAFETY TRAINING - UNLICENSED X-RAY TECHNICIANS

Cross references: For similar provisions in article 215 of this title 12 regulating chiropractors, see part 2 of said article 215; for similar provisions in article 290 of this title 12 regulating podiatrists, see part 2 of said article 290.

12-220-601. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that public exposure to the hazards of ionizing radiation used for diagnostic purposes should be minimized wherever possible. Accordingly, the general assembly finds, determines, and declares that for any dentist, dental therapist, or dental hygienist to allow an untrained person to operate a machine source of ionizing radiation, including without limitation a device commonly known as an "X-ray machine", or to administer radiation to a patient for diagnostic purposes is a threat to the public health and safety.

(2) It is the intent of the general assembly that dentists, dental therapists, and dental hygienists utilizing unlicensed persons in their practices provide those persons with a minimum level of education and training before allowing them to operate machine sources of ionizing radiation; however, it is not the general assembly's intent to discourage education and training beyond this minimum. It is further the intent of the general assembly that established minimum training and education requirements correspond as closely as possible to the requirements of each particular work setting as determined by the board pursuant to this part 6.

(3) The general assembly seeks to ensure, and accordingly declares its intent, that in promulgating the rules authorized by this part 6, the board will make every effort, consistent with its other statutory duties, to avoid creating a shortage of qualified individuals to operate machine sources of ionizing radiation for beneficial medical purposes in any area of the state.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 261, § 1, effective September 14. **L. 2022:** (1) and (2) amended, (SB 22-219), ch. 381, p. 2722, § 25, effective January 1, 2023.

Editor's note: This section is similar to former § 12-220-201 as it existed prior to 2020.

Cross references: For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of San Andreas 2022.

12-220-602. Minimum standards - rules - definition. (1) (a) The board shall adopt rules prescribing minimum standards for the qualifications, education, and training of unlicensed persons operating machine sources of ionizing radiation and administering radiation to patients for diagnostic medical use. A licensed dentist, dental therapist, or dental hygienist shall not allow an unlicensed person to operate a machine source of ionizing radiation or to administer radiation to any patient unless the person meets standards then in effect under rules adopted pursuant to this section. The board may adopt rules allowing a grace period in which newly hired operators of machine sources of ionizing radiation are to receive the training required by this section.

(b) As used in this part 6, "unlicensed person" means a person who does not hold a current and active license entitling the person to practice dentistry, dental therapy, or dental hygiene under this article 220.

(2) The board shall seek the assistance of licensed dentists, dental therapists, or dental hygienists in developing and formulating the rules promulgated pursuant to this section.

(3) The board shall establish by rule the required number of hours of training and education for all unlicensed persons operating machine sources of ionizing radiation and administering radiation to patients. This standard shall apply to all persons in dental settings other than hospitals and similar facilities licensed by the department of public health and environment pursuant to section 25-1.5-103. The training and education may be obtained through programs approved by the appropriate authority of any state or through equivalent programs and training experience, including on-the-job training as determined by the board.

Source: L. 2020: Entire article amended with relocations, (HB 20-1056), ch. 64, p. 261, § 1, effective September 14. **L. 2022:** (1) and (2) amended, (SB 22-219), ch. 381, p. 2722, § 26, effective January 1, 2023.

Editor's note: This section is similar to former § 12-220-202 as it existed prior to 2020.

Cross references: For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of San Andreas 2022.

ARTICLE 225

Direct-entry Midwives

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 225 was numbered as article 37 of this title 12 prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

12-225-101. Scope of article - exemptions - legislative declaration. (1) (a) This article 225 applies only to direct-entry midwives and does not apply to those persons who are otherwise

licensed by the state of San Andreas under this title 12 if the practice of midwifery is within the scope of that licensure.

(b) (I) A person who is a certified nurse-midwife authorized pursuant to section 12-255-111, a certified midwife authorized pursuant to section 12-255-111.5, or a physician as provided in article 240 of this title 12 shall not simultaneously be so licensed and also be registered under this article 225. A physician, certified nurse-midwife, or certified midwife who holds a license in good standing may relinquish the license and subsequently be registered under this article 225.

(II) A direct-entry midwife shall not represent oneself as a nurse-midwife, certified nurse-midwife, or certified midwife.

(III) The fact that a direct-entry midwife may hold a practical or professional nursing license does not expand the scope of practice of the direct-entry midwife.

(IV) The fact that a practical or professional nurse may be registered as a direct-entry midwife does not expand the scope of practice of the nurse.

(c) It is the intent of the general assembly that health care be provided pursuant to this article 225 as an alternative to traditional licensed health care and not for the purpose of enabling providers of traditional licensed health care to circumvent the regulatory oversight to which they are otherwise subject under any other part or article of this title 12.

(2) Nothing in this article 225 shall be construed to prohibit, or to require registration under this article 225, with regard to:

(a) The gratuitous rendering of services in an emergency;

(b) The rendering of services by a physician licensed pursuant to article 240 of this title 12 or otherwise legally authorized to practice in this state;

(c) The rendering of services by certified nurse-midwives or certified midwives properly licensed and practicing in accordance with part 1 of article 255 of this title 12; or

(d) The practice by persons licensed or registered under any law of this state, in accordance with that law, to practice a limited field of the healing arts not specifically designated in this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1131, § 1, effective October 1. **L. 2020:** (2)(c) amended, (HB 20-1183), ch. 157, p. 698, § 45, effective July 1. **L. 2023:** (1)(b)(I), (1)(b)(II), and (2)(c) amended, (SB 23-167), ch. 261, p. 1541, § 40, effective May 25.

Editor's note: This section is similar to former § 12-37-101 as it existed prior to 2019.

12-225-102. Applicability of common provisions. Articles 1, 20, and 30 of this title 12 apply, according to their terms, to this article 225.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1132, § 1, effective October 1.

12-225-103. Definitions. As used in this article 225, unless the context otherwise requires:

(1) "Birth center" means a freestanding facility licensed by the department of public health and environment that:

(a) Is not a hospital, attached to a hospital, or located in a hospital;

(b) Provides prenatal, labor, delivery, and postpartum care to low-risk pregnant persons and newborns; and

(c) Provides care during delivery and immediately after delivery that is generally less than twenty-four hours in duration.

(1.5) "Client" means a pregnant woman for whom a direct-entry midwife performs services. For purposes of perinatal or postpartum care, "client" includes the woman's newborn.

(2) "Direct-entry midwife" means a person who practices direct-entry midwifery.

(3) "Direct-entry midwifery" or "practice of direct-entry midwifery" means the advising, attending, or assisting of a woman during pregnancy, labor and natural childbirth at home or at a birth center, and the postpartum period in accordance with this article 225.

(4) "Natural childbirth" means the birth of a child without the use of instruments, surgical procedures, or prescription drugs other than those for which the direct-entry midwife has specific authority under this article 225 to obtain and administer.

(5) "Perinatal" means the period from the twenty-eighth week of pregnancy through seven days after birth.

(6) "Postpartum period" means the period of six weeks after birth.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1132, § 1, effective October 1. **L. 2021:** (1) and (3) amended and (1.5) added, (SB 21-101), ch. 196, p. 1049, § 3, effective September 1.

Editor's note: This section is similar to former § 12-37-102 as it existed prior to 2019.

12-225-104. Requirement for registration with the division - annual fee - grounds for revocation. (1) Every direct-entry midwife shall register with the division by applying to the director in the form and manner the director requires. The application shall include the information specified in section 12-225-105.

(2) Any changes in the information required by subsection (1) of this section shall be reported within thirty days after the change to the division in the form and manner required by the director.

(3) Every applicant for registration shall pay a registration fee to be established by the director in the manner authorized by section 12-20-105. Registrations issued pursuant to this article 225 are subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2). Any person whose registration has expired shall be subject to the penalties provided in this article 225 or section 12-20-202 (1).

(4) To qualify to register, a direct-entry midwife must have successfully completed an examination evaluated and approved by the director as an appropriate test to measure competency in the practice of direct-entry midwifery, which examination must have been developed by a person or entity other than the director or the division and the acquisition of which shall require no expenditure of state funds. The national registry examination administered by the Midwives Alliance of North America, or its successor, must be among those evaluated by the director. The director is authorized to approve any existing test meeting all the criteria set forth in this subsection (4). In addition to successfully completing the examination, a direct-entry midwife is qualified to register if the person has:

(a) Attained the age of nineteen years;

(b) Earned at least a high school diploma or the equivalent;

(c) Successfully completed training approved by the director in:

(I) The provision of care during labor and delivery and during the antepartum and postpartum periods;

(II) Parenting education for prepared childbirth;

(III) Aseptic techniques and universal precautions;

(IV) Management of birth and immediate care of the mother and the newborn;

(V) Recognition of early signs of possible abnormalities;

(VI) Recognition and management of emergency situations;

(VII) Special requirements for home birth;

(VIII) Recognition of communicable diseases affecting the pregnancy, birth, newborn, and postpartum periods; and

(IX) Recognition of the signs and symptoms of increased risk of medical, obstetric, or neonatal complications or problems as set forth in section 12-225-106 (3);

(d) Acquired practical experience including, at a minimum, experience with the conduct of at least one hundred prenatal examinations on no fewer than thirty different women and observation of at least thirty births;

(e) Participated as a birth attendant, including rendering care from the prenatal period through the postpartum period, in connection with at least thirty births; and

(f) Filed documentation with the director that the direct-entry midwife is currently certified by the American Heart Association or the American Red Cross to perform adult and infant cardiopulmonary resuscitation ("CPR").

(5) Effective July 1, 2003, in order to be deemed qualified to register, a direct-entry midwife must have graduated from an accredited midwifery educational program or obtained a substantially equivalent education approved by the director. The educational requirement does not apply to direct-entry midwives who have registered with the division before July 1, 2003.

(6) For purposes of registration under this article 225, no credential, licensure, or certification issued by any other state meets the requirements of this article 225, and therefore there is no reciprocity with other states.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1133, § 1, effective October 1.

Editor's note: This section is similar to former § 12-37-103 as it existed prior to 2019.

12-225-105. Mandatory disclosure of information to clients. (1) Every direct-entry midwife shall provide the following information in writing to each client during the initial client contact:

(a) The name, business address, and business phone number of the direct-entry midwife;

(b) A listing of the direct-entry midwife's education, experience, degrees, membership in any professional organization whose membership includes not less than one-third of all registrants, certificates or credentials related to direct-entry midwifery awarded by any such organization, and the length of time and number of contact hours required to obtain the degrees, certificates, or credentials;

(c) A statement indicating whether or not the direct-entry midwife is covered under a policy of liability insurance for the practice of direct-entry midwifery;

(d) A listing of any license, certificate, or registration in the health-care field previously or currently held by the direct-entry midwife and suspended or revoked by any local, state, or national health-care agency;

(e) A statement that the practice of direct-entry midwifery is regulated by the department. The statement must provide the address and telephone number of the office of midwifery registration in the division and shall state that violation of this article 225 may result in revocation of registration and of the authority to practice direct-entry midwifery in San Andreas.

(f) A copy of the emergency plan as provided in section 12-225-106 (6);

(g) A statement indicating whether or not the direct-entry midwife will administer vitamin K to the client's newborn infant and, if not, a list of qualified health-care practitioners who can provide that service; and

(h) A statement indicating whether or not the direct-entry midwife will administer Rho(D) immune globulin to the client if she is determined to be Rh-negative and, if not, a list of qualified health-care practitioners who can provide that service.

(2) Any changes in the information required by subsection (1) of this section shall be reflected in the mandatory disclosure within five days after the change.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1134, § 1, effective October 1.

Editor's note: This section is similar to former § 12-37-104 as it existed prior to 2019.

12-225-106. Prohibited acts - practice standards - informed consent - emergency plan - risk assessment - referral - rules. (1) A direct-entry midwife shall not dispense or administer any medication or drugs except in accordance with section 12-225-107.

(2) A direct-entry midwife shall not perform any operative or surgical procedure; except that a direct-entry midwife may perform sutures of perineal tears in accordance with section 12-225-107.

(3) A direct-entry midwife shall not provide care to a pregnant woman who, according to generally accepted medical standards, exhibits signs or symptoms of increased risk of medical or obstetric or neonatal complications or problems during the completion of her pregnancy, labor, delivery, or the postpartum period. Those conditions include but are not limited to signs or symptoms of diabetes, multiple gestation, hypertensive disorder, or abnormal presentation of the fetus.

(4) A direct-entry midwife shall not provide care to a pregnant woman who, according to generally accepted medical standards, exhibits signs or symptoms of increased risk that her child may develop complications or problems during the first six weeks of life.

(5) (a) A direct-entry midwife shall keep appropriate records of midwifery-related activity, including but not limited to the following:

(I) The direct-entry midwife shall complete and file a birth certificate for every delivery in accordance with section 25-2-112.

(II) The direct-entry midwife shall complete and maintain appropriate client records for every client.

(III) Before accepting a client for care, the direct-entry midwife shall obtain the client's informed consent, which shall be evidenced by a written statement in a form prescribed by the director and signed by both the direct-entry midwife and the client. The form shall certify that full disclosure has been made and acknowledged by the client as to each of the following items, with the client's acknowledgment evidenced by a separate signature or initials adjacent to each item in addition to the client's signature at the end of the form:

(A) The direct-entry midwife's educational background and training;

(B) The nature and scope of the care to be given, including the possibility of and procedure for transport of the client to a hospital and transferral of care prenatally;

(C) A description of the available alternatives to direct-entry midwifery care, including a statement that the client understands the client is not retaining a certified nurse midwife, a nurse midwife, or a certified midwife;

(D) A description of the risks of birth, including those that are different from those of hospital birth and those conditions that may arise during delivery;

(E) A statement indicating whether or not the direct-entry midwife is covered under a policy of liability insurance for the practice of direct-entry midwifery; and

(F) A statement informing the client that, if subsequent care is required resulting from the acts or omissions of the direct-entry midwife, any physician, nurse, certified midwife, prehospital emergency personnel, and health-care institution rendering subsequent care will be held only to a standard of gross negligence or willful and wanton conduct.

(IV) (A) Until the liability insurance required pursuant to section 12-225-112 (2) is available, each direct-entry midwife shall, before accepting a client for care, provide the client with a disclosure statement indicating that the direct-entry midwife does not have liability insurance. To comply with this section, the direct-entry midwife shall ensure that the disclosure statement is printed in at least twelve-point bold-faced type and shall read the statement to the client in a language the client understands. Each client shall sign the disclosure statement acknowledging that the client understands the effect of its provisions. The direct-entry midwife shall also sign the disclosure statement and provide a copy of the signed disclosure statement to the client.

(B) In addition to the information required in subsection (5)(a)(IV)(A) of this section, the direct-entry midwife shall include the following statement in the disclosure statement and shall display the statement prominently and deliver the statement orally to the client before the client signs the disclosure statement: "Signing this disclosure statement does not constitute a waiver of any right (insert client's name) has to seek damages or redress from the undersigned direct-entry midwife for any act of negligence or any injury (insert client's name) may sustain in the course of care administered by the undersigned direct-entry midwife."

(b) As used in this subsection (5), "full disclosure" includes reading the informed consent form to the client, in a language understood by the client, and answering any relevant questions.

(6) A direct-entry midwife shall prepare a plan, in the form and manner required by the director, for emergency situations. The plan must include procedures to be followed in situations in which the time required for transportation to the nearest facility capable of providing appropriate treatment exceeds limits established by the director by rule. A copy of the plan shall be given to each client as part of the informed consent required by subsection (5) of this section.

(7) A direct-entry midwife shall prepare and transmit appropriate specimens for newborn screening in accordance with section 25-4-1004 and shall refer every newborn child for evaluation, within seven days after birth, to a licensed health-care provider with expertise in pediatric care.

(8) A direct-entry midwife shall ensure that appropriate laboratory testing, as determined by the director, is completed for each client.

(9) (a) A direct-entry midwife shall provide eye prophylactic therapy to all newborn children in the direct-entry midwife's care in accordance with section 25-4-301.

(b) A direct-entry midwife shall inform the parents of all newborn children in the direct-entry midwife's care of the importance of critical congenital heart defect screening using pulse oximetry in accordance with section 25-4-1004.3. If a direct-entry midwife is not properly trained in the use of pulse oximetry or does not have the use of or own a pulse oximeter, the direct-entry midwife shall refer the parents to a health-care provider who can perform the screening. If a direct-entry midwife is properly trained in the use of pulse oximetry and has the use of or owns a pulse oximeter, the direct-entry midwife shall perform the critical congenital heart defect screening on newborn children in the direct-entry midwife's care in accordance with section 25-4-1004.3.

(10) A direct-entry midwife shall be knowledgeable and skilled in aseptic procedures and the use of universal precautions and shall use them with every client.

(11) To assure that proper risk assessment is completed and that clients who are inappropriate for direct-entry midwifery are referred to other health-care providers, the director shall establish, by rule, a risk assessment procedure to be followed by a direct-entry midwife for each client and standards for appropriate referral. The assessment shall be a part of each client's record as required in subsection (5)(a)(II) of this section.

(12) Repealed.

(13) A registered direct-entry midwife may purchase, possess, carry, and administer oxygen. The department shall promulgate rules concerning minimum training requirements for direct-entry midwives with respect to the safe administration of oxygen. Each registrant shall complete the minimum training requirements and submit proof of having completed the requirements to the director before administering oxygen to any client.

(14) A registrant shall not practice beyond the scope of the registrant's education and training.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1135, § 1, effective October 1. **L. 2021:** (12) repealed, (SB 21-101), ch. 196, p. 1049, § 4, effective September 1. **L. 2023:** (5)(a)(III)(C) and (5)(a)(III)(F) amended, (SB 23-167), ch. 261, p. 1541, § 41, effective May 25.

Editor's note: This section is similar to former § 12-37-105 as it existed prior to 2019.

12-225-107. Limited use of certain medications - limited use of sutures - limited administration of intravenous fluids - emergency medical procedures - rules. (1) A registrant may obtain prescription medications to treat conditions specified in this section from a registered prescription drug outlet, registered manufacturer, or registered wholesaler. An entity that provides a prescription medication to a registrant in accordance with this section, and who

relies in good faith upon the registration information provided by the registrant, is not subject to liability for providing the medication.

(2) Except as otherwise provided in subsection (3) of this section, a registrant may obtain and administer:

(a) Vitamin K to newborns by intramuscular injection;

(b) Rho(D) immune globulin to Rh-negative mothers by intramuscular injection;

(c) Postpartum antihemorrhagic drugs to mothers;

(d) Eye prophylaxis;

(e) Local anesthetics, as specified by the director by rule, to use in accordance with subsection (6) of this section; and

(f) Group B streptococcus (GBS) prophylaxis, subject to the limitations in subsection (7) of this section.

(3) (a) If a client refuses a medication listed in subsection (2)(a) or (2)(b) of this section, the registrant shall provide the client with an informed consent form containing a detailed statement of the benefits of the medication and the risks of refusal, and shall retain a copy of the form acknowledged and signed by the client.

(b) If a client experiences uncontrollable postpartum hemorrhage and refuses treatment with antihemorrhagic drugs, the registrant shall immediately initiate the transportation of the client in accordance with the emergency plan.

(4) A registrant shall, as part of the emergency medical plan required by section 12-225-106 (6), inform the client that:

(a) If she experiences uncontrollable postpartum hemorrhage, the registrant is required by San Andreas law to initiate emergency medical treatment, which may include the administration of an antihemorrhagic drug by the registrant to mitigate the postpartum hemorrhaging while initiating the immediate transportation of the client in accordance with the emergency plan.

(b) If she experiences postpartum hemorrhage, the registrant is prepared and equipped to administer intravenous fluids to restore volume lost due to excessive bleeding.

(5) The director shall promulgate rules to implement this section. In promulgating the rules, the director shall seek the advice of knowledgeable medical professionals to set standards for education, training, and administration that reflect current generally accepted professional standards for the safe and effective use of the medications, methods of administration, and procedures described in this section, including a requirement that, to administer intravenous fluids, the registrant complete an intravenous therapy course or program approved by the director. The director shall establish a preferred drug list that displays the medications that a registrant can obtain.

(6) (a) Subject to subsection (6)(b) of this section, a registrant may perform sutures of first-degree and second-degree perineal tears, as defined by the director by rule, on a client and may administer local anesthetics to the client in connection with suturing perineal tears.

(b) In order to perform sutures of first-degree and second-degree perineal tears, the registrant shall apply to the director, in the form and manner required by the director, and pay any application fee the director may impose, for an authorization to perform sutures of first-degree and second-degree perineal tears. As part of the application, the registrant shall demonstrate to the director that the registrant has received education and training approved by the director on suturing of perineal tears within the year immediately preceding the date of the application or within such other time the director, by rule, determines to be appropriate. The

director may grant the authorization to the registrant only if the registrant has complied with the education and training requirement specified in this subsection (6)(b).

(7) A registered direct-entry midwife who was initially registered prior to January 1, 2000, must apply to the director and pay any applicable fees before obtaining or administering group B streptococcus (GBS) prophylaxis as part of the registrant's practice of direct-entry midwifery. The director shall verify the qualifications of a registrant applying pursuant to this subsection (7) before granting the registrant the authority to obtain and administer group B streptococcus (GBS) prophylaxis.

(8) A registrant who is granted authority to act pursuant to this section is not required to apply for renewal of the authority or pay any renewal fees pertaining to the authority granted in this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1138, § 1, effective October 1. **L. 2021:** (2)(d), (2)(e), and (6)(b) amended and (2)(f), (7), and (8) added, (SB 21-101), ch. 196, p. 1050, § 5, effective September 1.

Editor's note: This section is similar to former § 12-37-105.5 as it existed prior to 2019.

12-225-108. Director - powers and duties - rules. (1) In addition to any other powers and duties conferred on the director by law, the director has the following powers and duties:

(a) To adopt rules pursuant to section 12-20-204;

(b) To establish the fees for registration and renewal of registration in the manner authorized by section 12-20-105;

(c) To prepare or adopt suitable education standards for applicants and to adopt a registration examination;

(d) To accept applications for registration that meet the requirements set forth in this article 225, and to collect the annual registration fees authorized by this article 225;

(e) To seek an injunction in accordance with section 12-20-406 to enjoin any person from committing an act prohibited by this article 225;

(f) To summarily suspend a registration upon the failure of the registrant to comply with any condition of a stipulation or order imposed by the director until the registrant complies with the condition, unless compliance is beyond the control of the registrant;

(g) To develop policies and protocols, by rule, for direct-entry midwives in training that reflect the requirements of the North American Registry of Midwives, or its successor organization;

(h) To order the physical or mental examination of a direct-entry midwife if the director has reasonable cause to believe that the direct-entry midwife is subject to a physical or mental disability that renders the direct-entry midwife unable to treat patients with reasonable skill and safety or that may endanger a patient's health or safety. The director may order a physical or mental examination regardless of whether there is injury to a patient.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1140, § 1, effective October 1. **L. 2021:** (1)(g) and (1)(h) added, (SB 21-101), ch. 196, p. 1050, § 6, effective September 1.

Editor's note: This section is similar to former § 12-37-106 as it existed prior to 2019.

12-225-109. Disciplinary action authorized - grounds for discipline - injunctions - rules. (1) If a direct-entry midwife has violated any of the provisions of section 12-225-104, 12-225-105, 12-225-106, or 12-225-112 (2), the director may take disciplinary or other action as authorized by section 12-20-404 or seek an injunction against a direct-entry midwife in accordance with section 12-20-406 to enjoin the direct-entry midwife from practicing midwifery or committing a violation specified in this subsection (1).

(2) (a) The director may assess a civil penalty in the form of a fine, not to exceed five thousand dollars, for violation of a rule or order of the director or any other act or omission prohibited by this article 225.

(b) The director shall adopt rules establishing a fine structure and the circumstances under which fines may be imposed.

(3) The director may take disciplinary action as authorized by section 12-20-404 (1)(a), (1)(b), or (1)(d) for any of the following acts or omissions:

(a) Any violation of section 12-225-104, 12-225-105, 12-225-106, or 12-225-112 (2) or an applicable provision of article 20 or 30 of this title 12;

(b) Failing to provide any information required pursuant to, or to pay any fee assessed in accordance with, section 12-225-104 or providing false, deceptive, or misleading information to the division that the direct-entry midwife knew or should reasonably have known was false, deceptive, or misleading;

(c) Failing to respond in an honest, materially responsive, and timely manner to a letter of complaint from the director;

(d) Failing to comply with an order of the director, including an order placing conditions or restrictions on the registrant's practice;

(e) Engaging in any act or omission that does not meet generally accepted standards of safe care for women and infants, whether or not actual injury to a client is established;

(f) Abuse or habitual or excessive use of a habit-forming drug, a controlled substance as defined in section 18-18-102 (5), or alcohol;

(g) Procuring or attempting to procure a registration in this or any other state or jurisdiction by fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact;

(h) Having had a license or registration to practice direct-entry midwifery or any other health-care profession or occupation suspended or revoked in any jurisdiction;

(i) Violating any law or regulation governing the practice of direct-entry midwifery in another state or jurisdiction. A plea of nolo contendere or its equivalent accepted by any state agency of another state or jurisdiction may be considered to be the same as a finding of violation for purposes of a proceeding under this article 225.

(j) Falsifying, failing to make essential entries in, or in a negligent manner making incorrect entries in client records;

(k) Conviction of a felony or acceptance by a court of a plea of guilty or nolo contendere to a felony. A certified copy of the judgment of a court of competent jurisdiction of a conviction or plea shall be prima facie evidence of the conviction.

(l) Aiding or knowingly permitting any person to violate any provision of this article 225 or an applicable provision of article 20 or 30 of this title 12;

(m) Advertising through newspapers, magazines, circulars, direct mail, directories, radio, television, website, e-mail, text message, or otherwise that the registrant will perform any act prohibited by this article 225; or

(n) (I) Failing to notify the director, as required by section 12-30-108 (1), of a physical illness, physical condition, or behavioral, mental health, or substance use disorder that renders the registrant unable, or limits the registrant's ability, to practice direct-entry midwifery with reasonable skill and safety to the client;

(II) Failing to act within the limitations created by a physical illness, physical condition, or behavioral, mental health, or substance use disorder that renders the registrant unable to practice direct-entry midwifery with reasonable skill and safety or that may endanger the health or safety of persons under the registrant's care; or

(III) Failing to comply with the limitations agreed to under a confidential agreement entered pursuant to sections 12-30-108 and 12-225-111.

(4) Any proceeding to deny, suspend, or revoke a registration or place a registrant on probation shall be conducted pursuant to sections 12-20-403, 24-4-104, and 24-4-105. Section 12-20-408 governs judicial review of any final decision of the director.

(5) The director may accept as prima facie evidence of grounds for disciplinary action any disciplinary action taken against a registrant by another jurisdiction if the violation that prompted the disciplinary action would be grounds for disciplinary action under this article 225.

(6) The person providing copies of records subpoenaed pursuant to section 12-20-403 (2) shall prepare the copies from the original record and shall delete the name of the patient or client, to be retained by the custodian of the records from which the copies were made, but shall identify the patient or client by a numbered code. Upon certification by the custodian that the copies are true and complete except for the patient's or client's name, the copies shall be deemed authentic, subject to the right to inspect the originals for the limited purpose of ascertaining the accuracy of the copies. No privilege of confidentiality exists with respect to the copies and no liability lies against the director or the custodian or the director's or custodian's authorized employees for furnishing or using the copies in accordance with this section.

(7) The director may issue and send a letter of admonition to a registrant under the circumstances specified in and in accordance with section 12-20-404 (4).

(8) The director may send a confidential letter of concern to a registrant under the circumstances specified in section 12-20-404 (5).

(9) The director may issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1140, § 1, effective October 1.

Editor's note: This section is similar to former § 12-37-107 as it existed prior to 2019.

12-225-110. Unauthorized practice - penalties. Any person who practices or offers or attempts to practice direct-entry midwifery without an active registration issued under this article 225 is subject to penalties pursuant to section 12-20-407 (1)(a).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1145, § 1, effective October 1.

Editor's note: This section is similar to former § 12-37-108 as it existed prior to 2019.

12-225-111. Confidential agreement to limit practice. Section 12-30-108 concerning confidential agreements to limit practice applies to this article 225.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1145, § 1, effective October 1.

Editor's note: This section is similar to former § 12-37-108.5 as it existed prior to 2019.

12-225-112. Assumption of risk - no vicarious liability - professional liability insurance required. (1) It is the policy of this state that registrants are liable for their acts or omissions in the performance of the services that they provide, and that no licensed physician, nurse, certified midwife, prehospital emergency medical personnel, or health-care institution is liable for any act or omission resulting from the administration of services by any registrant. This subsection (1) does not relieve any physician, nurse, certified midwife, prehospital emergency personnel, or health-care institution from liability for any willful and wanton act or omission or any act or omission constituting gross negligence, or under circumstances where a registrant has a business or supervised relationship with the physician, nurse, certified midwife, prehospital emergency personnel, or health-care institution. A physician, nurse, certified midwife, prehospital emergency personnel, or health-care institution may provide consultation or education to the registrant without establishing a business or supervisory relationship, and is encouraged to accept referrals from registrants pursuant to this article 225.

(2) If the director finds that liability insurance is available at an affordable price, registrants shall be required to carry liability insurance.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1146, § 1, effective October 1. **L. 2023:** (1) amended, (SB 23-167), ch. 261, p. 1542, § 42, effective May 25.

Editor's note: This section is similar to former § 12-37-109 as it existed prior to 2019.

12-225-113. Confidential files. The director may keep confidential all files and information concerning an investigation authorized under this article 225 until the results of the investigation are provided to the director and either the complaint is dismissed or notice of hearing and charges are served upon the person subject to the investigation.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1146, § 1, effective October 1.

Editor's note: This section is similar to former § 12-37-109.7 as it existed prior to 2019.

12-225-114. Repeal of article - subject to review. This article 225 is repealed, effective September 1, 2028. Before the repeal, the registering of direct-entry midwives by the division is scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1147, § 1, effective October 1. **L. 2021:** Entire section amended, (SB 21-101), ch. 196, p. 1048, § 2, effective September 1.

Editor's note: This section is similar to former § 12-37-110 as it existed prior to 2019.

ARTICLE 230

Hearing Aid Providers

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 230 was numbered as article 5.5 of this title 12 prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

PART 1

GENERAL PROVISIONS

12-230-101. Applicability of common provisions. Articles 1, 20, and 30 of this title 12 apply, according to their terms, to this article 230.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1147, § 1, effective October 1.

12-230-102. Definitions. As used in this article 230, unless the context otherwise requires:

(1) "Apprentice" means a person who holds a current license as an apprentice pursuant to this article 230.

(2) "Dispense", with regard to a hearing aid, means to sell or transfer title, possession, or the right to use by lease, bailment, or any other method. The term does not apply to wholesale transactions with distributors or dealers.

(3) (a) "Hearing aid" means a wearable device designed or offered to be customized for the purpose of compensating for impaired human hearing and includes:

(I) Any parts, attachments, or accessories to the instrument or device, as defined in rules adopted by the director; and

(II) Ear molds, excluding batteries and cords.

(b) The term does not include a surgically implanted hearing device.

(4) "Hearing aid provider" means a person engaged in the practice of dispensing, fitting, or dealing in hearing aids.

(5) "Practice of dispensing, fitting, or dealing in hearing aids" includes:

(a) Selecting and adapting hearing aids for sale;

(b) Testing human hearing for purposes of selecting and adapting hearing aids for sale; and

(c) Making impressions for ear molds and counseling and instructing prospective users for purposes of selecting, fitting, adapting, or selling hearing aids.

(6) "Surgically implanted hearing device" means a device that is designed to produce useful hearing sensations to a person with a hearing impairment and that has, as one or more components, a unit that is surgically implanted into the ear, skull, or other interior part of the body. The term includes any associated unit that may be worn on the body.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1147, § 1, effective October 1.

Editor's note: This section is similar to former § 12-5.5-101 as it existed prior to 2019.

12-230-103. Scope of article - exemption. (1) This article 230 does not apply to persons who are:

(a) Licensed pursuant to section 22-60.5-210 and who are not licensed under this article 230 for work undertaken as part of their employment by, or contractual agreement with, the public schools; or

(b) Engaged in the practice of audiology or the practice of dispensing, fitting, or dealing in hearing aids in the discharge of their official duties in the service of the United States armed forces, public health service, Coast Guard, or veterans administration.

(2) This article 230 does not apply to the wholesale sales of hearing aids.

(3) Nothing in this article 230 authorizes a hearing aid provider to engage in the practice of medicine as defined in section 12-240-107.

(4) Nothing in this article 230 prohibits a business or licensee from hiring and employing unlicensed staff to assist with conducting business practices and to assist in dispensing hearing aids if the unlicensed staff are properly supervised by a licensee; except that the unlicensed staff may not conduct hearing tests or perform the initial fitting of hearing aids.

(5) This article 230 does not apply to the dispensing of hearing aids outside of this state.

(6) An audiologist licensed pursuant to article 210 of this title 12 is not required to obtain a license pursuant to this article 230.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1148, § 1, effective October 1. **L. 2020:** (4) amended, (HB 20-1218), ch. 299, p. 1485, § 5, effective September 1.

Editor's note: This section is similar to former § 12-5.5-102 as it existed prior to 2019.

12-230-104. Scope of practice. (1) The scope of practice for a hearing aid provider includes:

(a) Eliciting patient case histories, including medical, otological, pharmacological, occupational, and previous amplification history and patient attitudes and expectations;

(b) Administering otoscopy for the purpose of identifying possible otological conditions, including conditions described in section 6-1-701 (2)(d), that may indicate the need for medical referral or that may have a bearing on needed rehabilitative measures, outcomes, or recommendations;

(c) Administering and interpreting tests of human hearing, including appropriate objective and subjective methodology and measures;

(d) Determining a person's candidacy for hearing aids or hearing assistive devices, referring the person for surgically implanted hearing device evaluation, or recommending other clinical, rehabilitative, or medical interventions;

(e) Prescribing, selecting, and fitting appropriate hearing instruments and assistive devices, including appropriate technology, electroacoustic targets, programming parameters, and special applications, as indicated, whether in person or through the use of telehealth;

(f) Assessing hearing instrument efficacy using appropriate fitting verification methodology, including available fitting validation methods;

(g) Taking ear impressions and preparing ear molds for hearing instruments, assistive devices, telecommunications applications, ear protection, and other related applications;

(h) Designing and modifying ear molds and auditory equipment to meet individual patient needs;

(i) Providing counseling and aural rehabilitative services in the use and care of hearing instruments and assistive devices and for effectively using communication coping strategies and other approaches to foster optimal patient rehabilitation; and

(j) Providing supervision and training of those entering the dispensing profession.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1149, § 1, effective October 1. **L. 2020:** (1)(e) amended, (HB 20-1218), ch. 299, p. 1485, § 6, effective September 1. **L. 2022:** (1)(e) amended, (HB 22-1076), ch. 64, p. 321, § 1, effective August 10.

Editor's note: This section is similar to former § 12-5.5-103 as it existed prior to 2019.

12-230-105. Title protection - use of title. It is unlawful for any person to use the title "hearing aid provider" or "hearing aid dispenser" or any other title that implies the person is qualified as a hearing aid provider unless the person is licensed as a hearing aid provider pursuant to this article 230.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1149, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1218), ch. 299, p. 1485, § 7, effective September 1.

Editor's note: This section is similar to former § 12-5.5-104 as it existed prior to 2019.

12-230-106. Repeal of article - review of functions. This article 230 is repealed, effective September 1, 2031. Before the repeal, the licensing and supervisory functions of the director are scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1149, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1218), ch. 299, p. 1483, § 1, effective September 1.

Editor's note: This section is similar to former § 12-5.5-105 as it existed prior to 2019.

PART 2

LICENSING

12-230-201. License required - application - qualifications. (1) A hearing aid provider shall obtain a license pursuant to this section before:

(a) Engaging in the practice of dispensing, fitting, or dealing in hearing aids; or

(b) Directly or indirectly selling or negotiating to sell any hearing aid for the hearing impaired.

(2) (a) An applicant shall submit an application to the director containing the information described in this subsection (2) and shall pay a fee determined and collected pursuant to section 12-20-105. The director may deny an application for licensure if the required information is not submitted or if an applicant's apprentice license, issued pursuant to section 12-230-204, has been revoked. If an applicant or licensee fails to notify the director of a change in the submitted information within thirty days after the change, the failure is cause for disciplinary action.

(b) An applicant shall include the following information in every application for licensure pursuant to this section:

(I) The applicant's name, business address, and business telephone number and other contact information as determined by the director;

(II) A statement indicating whether:

(A) A hearing aid provider license, certificate, or registration was issued to the applicant by a local, state, or national health-care agency;

(B) The license, certificate, or registration was suspended or revoked;

(C) Charges or complaints are pending against the applicant; and

(D) Disciplinary action was taken.

(3) In order to qualify for licensure pursuant to this section, an applicant must either:

(a) Have passed a competency examination as determined by the director by rule; or

(b) Have passed an appropriate entry-level examination, as determined by the director, and:

(I) Completed at least six months of training with an audiologist or licensed hearing aid provider, pursuant to section 12-230-204; or

(II) Have an associate's degree in hearing aid fitting and dispensing that, at the time the applicant was enrolled and graduated, was offered by an institution of higher education or a postsecondary education program accredited by a national, regional, or state agency recognized by the United States department of education, or a program approved by the director.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1150, § 1, effective October 1. **L. 2020:** (1) and (3)(a) amended, (HB 20-1218), ch. 299, p. 1485, § 8, effective September 1.

Editor's note: This section is similar to former § 12-5.5-201 as it existed prior to 2019.

12-230-202. Licensure - expiration - renewal - reinstatement - fees. (1) (a) The director shall license all applicants who meet the requirements for licensure in this article 230.

(b) The director shall issue or deny a license within sixty days after the date the application is received.

(c) The director shall give each licensee a license bearing a unique license number. The licensee shall include the license number on all written contracts and receipts.

(2) Licenses issued pursuant to this article 230 are subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2). A person whose license has expired is subject to the penalties set forth in this article 230 or in section 12-20-202 (1).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1151, § 1, effective October 1.

Editor's note: This section is similar to former § 12-5.5-202 as it existed prior to 2019; except that § 12-5.5-202 (2) was relocated to § 12-20-202 (1)(a).

12-230-203. Licensure by endorsement. The director shall issue a license by endorsement to practice as a hearing aid provider in this state to an applicant who satisfies the requirements of the occupational credential portability program.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1151, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1326), ch. 126, p. 539, § 25, effective June 25.

Editor's note: This section is similar to former § 12-5.5-203 as it existed prior to 2019.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-230-204. Apprentice license - expiration - rules. (1) A person training to be a licensed hearing aid provider shall submit to the director an application containing the information described in subsection (2) of this section and shall pay an apprentice license fee determined and collected pursuant to section 12-20-105.

(2) On and after June 1, 2014, the director shall issue an apprentice license to a person who provides, to the director's satisfaction, verification of training to become a licensed hearing aid provider, which training is under the direct supervision of a licensed hearing aid provider whose license is in good standing.

(3) During the training period:

(a) An apprentice is not permitted to sell hearing aids independently of the supervising licensed hearing aid provider;

(b) A supervising licensed hearing aid provider retains ultimate responsibility for the care provided by the apprentice and is subject to disciplinary action by the director for failure to provide adequate supervision.

(4) Any person issued an apprentice license under this section is subject to:

(a) Discipline under section 12-230-302 for engaging in an act that constitutes grounds for discipline under section 12-230-401; and

(b) A cease-and-desist order under sections 12-20-405 and 12-230-303 for engaging in behavior set forth in section 12-20-405.

(5) An apprentice license issued under this section is renewable and is subject to section 12-230-202 (2).

(6) A person in this state training to be a licensed hearing aid provider must possess a valid apprentice license issued by the director pursuant to this article 230 and rules promulgated pursuant to this article 230.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1151, § 1, effective October 1.

Editor's note: This section is similar to former § 12-5.5-204 as it existed prior to 2019.

12-230-205. Retention of records - licensee's obligation. Each licensee who sells a hearing aid or provides goods or services to a customer shall develop a written plan to ensure the maintenance of customer records. The records must be retained for at least seven years and identify the customer by name; the goods or services, except batteries, minor parts, and accessories, provided to each customer; and the date and price of each transaction.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1152, § 1, effective October 1.

Editor's note: This section is similar to former § 12-5.5-206 as it existed prior to 2019.

12-230-206. Financial assurance required - rules. (1) Before the director issues a license to an applicant for a hearing aid provider license, the applicant shall post a surety bond in the amount of ten thousand dollars, maintain a one-million-dollar professional liability policy, or comply with an alternative as determined by the director. A licensed hearing aid provider shall maintain the required bond, policy, or alternative at all times.

(2) The director may file a claim, or assist a consumer in filing a claim, on the bond, policy, or alternative.

(3) The director, by rule, shall determine the requirements for the financial assurance required by this section.

Source: L. 2020: Entire section added, (HB 20-1218), ch. 299, p. 1486, § 9, effective September 1.

12-230-207. Continuing education. Each licensed hearing aid provider in active practice within the state of San Andreas shall annually attend not less than eight hours of continuing education on subjects related to the scope of practice specified in section 12-230-104.

Source: L. 2020: Entire section added, (HB 20-1218), ch. 299, p. 1486, § 9, effective September 1.

PART 3

DIRECTOR - POWERS, DUTIES, AND RULES

12-230-301. Director - powers - duties - rules. (1) The director, in accordance with section 12-20-403, may make investigations and inspections as necessary to determine whether an applicant or licensee has violated this article 230 or any rule adopted by the director.

(2) The director may apply for injunctive relief in accordance with section 12-20-406 to enjoin any act or practice that constitutes a violation of this article 230. Upon a showing that a person is engaging in or intends to engage in the act or practice, the court shall grant an injunction, restraining order, or other appropriate order, regardless of the existence of another remedy.

(3) No later than December 31, 2013, and thereafter as necessary, the director shall adopt rules pursuant to section 12-20-204.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1152, § 1, effective October 1.

Editor's note: This section is similar to former § 12-5.5-301 as it existed prior to 2019.

12-230-302. Disciplinary actions. (1) If the director determines that an applicant or licensee has committed any of the acts specified in section 12-230-401, the director may:

(a) Issue a letter of admonition under the circumstances specified in and in accordance with section 12-20-404 (4);

(b) Place a licensee on probation pursuant to section 12-20-404 (1)(b);

(c) Impose an administrative fine not to exceed two thousand five hundred dollars for each separate offense; or

(d) Take disciplinary action as authorized in section 12-20-404 (1)(d).

(2) The director may send a licensee a confidential letter of concern under the circumstances specified in section 12-20-404 (5).

(3) The director shall not enforce any provisions of this article 230 or rules promulgated pursuant to this article 230 that are held unconstitutional, invalid, or inconsistent with federal laws or regulations, including regulations promulgated by the United States food and drug administration.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1153, § 1, effective October 1.

Editor's note: This section is similar to former § 12-5.5-302 as it existed prior to 2019.

12-230-303. Cease-and-desist orders - unauthorized practice - penalties. (1) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a licensee is acting in a manner that is a threat to the health and safety of the public, or a person is acting or has acted without the required license, the director, in accordance with the procedures specified in section 12-20-405, may issue an order to cease and desist the activity. The order must set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, the specific harm that threatens the health and safety of the public, and the requirement that all unlawful acts or unlicensed practices immediately cease.

(2) A person who practices or offers or attempts to practice as a hearing aid provider or who engages in the practice of dispensing, fitting, or dealing in hearing aids without an active hearing aid provider license issued under this article 230 is subject to penalties pursuant to section 12-20-407 (1)(a).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1153, § 1, effective October 1.

Editor's note: This section is similar to former § 12-5.5-303 as it existed prior to 2019.

PART 4

GROUNDS FOR DISCIPLINE

12-230-401. Grounds for discipline. (1) The following acts constitute grounds for discipline:

(a) Making a false or misleading statement or omission in an application for licensure;

(b) Violating any provision of this article 230, an applicable provision of article 20 or 30 of this title 12, a rule promulgated by the director under this article 230, or an order issued by the director under this article 230;

(c) Using false or misleading advertising;

(d) Representing that the service or advice of a person licensed to practice medicine will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true or using the terms "doctor", "clinic", "state-licensed clinic", "state-registered", "state-certified", "state-approved", or any other term, abbreviation, or symbol when it would give the false impression that service is being provided by persons trained in medicine or that the licensee's service has been recommended by the state when that is not the case, or when it would be false or misleading;

(e) Directly or indirectly giving or offering to give money or anything of value to any person who advises another in a professional capacity as an inducement to influence the person or have the person influence others to purchase or contract to purchase products sold or offered for sale by a licensee or influencing persons to refrain from dealing in the products of competitors;

(f) Employing a device, a scheme, or artifice with the intent to defraud a purchaser of a hearing aid;

(g) Selling a hearing aid to a child under eighteen years of age without receiving documentation that the child has been examined by a licensed physician and an audiologist within six months prior to the fitting;

(h) Intentionally disposing of, concealing, diverting, converting, or otherwise failing to account for any funds or assets of a purchaser of a hearing aid that is under the applicant's, licensee's, or apprentice's control;

(i) Making a false or misleading statement of fact concerning goods or services or the buyer's right to cancel with the intention or effect of deterring or preventing the buyer from exercising the buyer's right to cancel, or refusing to honor a buyer's request to cancel a contract for the purchase of a hearing aid, if the request was made during the rescission period set forth in section 6-1-701 (2)(e);

(j) Charging, collecting, or recovering any cost or fee for any good or service that has been represented by the licensee as free;

(k) Failing to adequately supervise a licensed hearing aid provider apprentice or any employee pursuant to section 12-230-103 (4) or 12-230-204 (2);

(l) Employing a sales agent or employee who violates any provision of this article 230, a rule promulgated by the director under this article 230, or an order issued by the director under this article 230;

(m) Failing to comply with a stipulation or agreement made with the director or with a final agency order;

(n) Failing to respond in an honest, materially responsive, and timely manner to a complaint issued pursuant to this article 230;

(o) Being convicted of, accepting a plea of guilty or nolo contendere to, or receipt of a deferred sentence in any court for a felony or for any crime involving fraud, deception, false pretense, theft, misrepresentation, false advertising, or dishonest dealing;

(p) Selling, dispensing, adjusting, providing training or teaching in regard to, or otherwise servicing surgically implanted hearing devices unless the hearing aid provider is an audiologist or a physician;

(q) Violating the "San Andreas Consumer Protection Act", article 1 of title 6; and

(r) Failing to practice according to commonly accepted professional standards.

(2) Any disciplinary action taken by another state, a local jurisdiction, or the federal government against an applicant or licensee constitutes prima facie evidence of grounds for disciplinary action, including denial of a license under this article 230; except that this subsection (2) applies only to discipline for acts or omissions that are substantially similar to those set out as grounds for disciplinary action under this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1154, § 1, effective October 1. **L. 2020:** (1)(k), (1)(p), and (1)(q) amended and (1)(r) and (2) added, (HB 20-1218), ch. 299, p. 1486, § 10, effective September 1.

Editor's note: This section is similar to former § 12-5.5-401 as it existed prior to 2019.

PART 5

DECEPTIVE TRADE PRACTICES

12-230-501. Definitions. As used in this part 5, unless the context otherwise requires:

(1) "Dispenser" means a person licensed as a hearing aid provider pursuant to part 2 of this article 230 who dispenses hearing aids.

Source: L. 2020: Entire part added, (HB 20-1218), ch. 299, p. 1486, § 11, effective September 1.

12-230-502. Dispensing hearing aids - deceptive trade practices. (1) In addition to any other deceptive trade practices under section 6-1-105, a dispenser engages in a deceptive trade practice when the dispenser:

(a) Fails to deliver to each person to whom the dispenser dispenses a hearing aid a receipt that:

(I) Bears the business address of the dispenser, together with specifications as to the make and serial number of the hearing aid furnished and the full terms of the sale clearly stated. If the dispenser dispenses a hearing aid that is not new, the dispenser shall clearly mark on the hearing aid container and the receipt the term "used" or "reconditioned", whichever is applicable, within the terms of the guarantee, if any.

(II) Bears, in no smaller type than the largest used in the body of the receipt, in substance, a provision that the buyer has been advised at the outset of the buyer's relationship with the dispenser that any examination or representation made by a dispenser in connection with the practice of dispensing, fitting, or dealing in hearing aids is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and, therefore, must not be regarded as medical opinion or advice;

(III) Bears, in no smaller type than the largest used in the body of the receipt, a provision indicating that dispensers who are licensed by the department are regulated by the division; and

(IV) Bears a provision labeled "warranty" in which the exact warranty terms and periods available from the manufacturer are documented, or includes an original or photocopy of the original manufacturer's warranty with the receipt;

(b) Dispenses a hearing aid to a child under eighteen years of age without receiving documentation that the child has been examined by a licensed physician and an audiologist within six months prior to the fitting;

(c) Dispenses, adjusts, provides training or teaching in regard to, or otherwise services surgically implanted hearing devices unless the dispenser is an audiologist or physician;

(d) Fails to recommend in writing, prior to fitting or dispensing a hearing aid, that the best interests of the prospective user would be served by consulting a licensed physician specializing in diseases of the ear, or any licensed physician, if any of the following conditions exist:

(I) Visible congenital or traumatic deformity of the ear;

(II) Active drainage of the ear, or a history of drainage of the ear within the previous ninety days;

(III) History of sudden or rapidly progressive hearing loss;

(IV) Acute or chronic dizziness;

(V) Unilateral hearing loss of sudden onset within the previous ninety days;

(VI) Audiometric air-bone gap equal to or greater than fifteen decibels at 500 hertz (Hz), 1,000 Hz, and 2,000 Hz;

(VII) Visible evidence of significant cerumen accumulation on, or a foreign body in, the ear canal; or

(VIII) Pain or discomfort in the ear;

(e) Fails to provide a minimum thirty-day rescission period with the following terms:

(I) The buyer has the right to cancel the purchase for any reason before the expiration of the rescission period by giving or mailing written notice of cancellation to the dispenser and presenting the hearing aid to the dispenser, unless the hearing aid has been lost or significantly damaged beyond repair while in the buyer's possession and control. The rescission period is tolled for any period during which a dispenser takes possession or control of a hearing aid after its original delivery.

(II) The buyer, upon cancellation, is entitled to receive a full refund of any payment made for the hearing aid within thirty days after returning the hearing aid to the dispenser, unless the hearing aid was significantly damaged beyond repair while in the buyer's possession and control.

(III) (A) The dispenser shall provide a written receipt or contract to the buyer that includes, in immediate proximity to the space reserved for the signature of the buyer, the following specific statement in all capital letters of no less than ten-point, bold-faced type:

THE BUYER HAS THE RIGHT TO CANCEL THIS PURCHASE FOR ANY REASON AT ANY TIME PRIOR TO 12 MIDNIGHT ON THE [Insert applicable rescission period, which must be no shorter than thirty days after receipt of the hearing aid] **CALENDAR DAY AFTER RECEIPT OF THE HEARING AID BY GIVING OR MAILING THE DISPENSER WRITTEN NOTICE OF CANCELLATION AND BY RETURNING THE HEARING AID, UNLESS THE HEARING AID HAS BEEN SIGNIFICANTLY DAMAGED BEYOND REPAIR WHILE THE HEARING AID WAS IN THE BUYER'S CONTROL.**

(B) The written contract or receipt provided to the buyer must also contain a statement, in print size no smaller than ten-point type, that the sale is void and unenforceable if the hearing aid being purchased is not delivered to the consumer within thirty days after the date the written contract is signed or the receipt is issued, whichever occurs later. The written contract or receipt must also include the dispenser's license number, if the dispenser is required to be licensed by the state, and a statement that the dispenser will promptly refund all money paid for the purchase of the hearing aid if it is not delivered to the consumer within the thirty-day period. The buyer cannot waive this requirement, and any attempt to waive it is void.

(IV) A refund request form must be attached to each receipt and must contain the information in subsection (1)(a)(I) of this section and the statement, in all capital letters of no less than ten-point, bold-faced type:

REFUND REQUEST - THIS FORM MUST BE POSTMARKED BY _____ [Date to be filled in]. **NO REFUND WILL BE GIVEN UNTIL THE HEARING AID OR HEARING AIDS ARE RETURNED TO THE DISPENSER.**

A space for the buyer's address, telephone number, and signature must be provided. The buyer is required only to sign, list the buyer's current address and telephone number, and mail the refund

request form to the dispenser. If the hearing aid is sold in the buyer's home, the buyer may require the dispenser to arrange the return of the hearing aid.

(f) Represents that the service or advice of a person licensed to practice medicine will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true or using the terms "doctor", "clinic", "state-licensed clinic", "state-registered", "state-certified", or "state-approved", or any other term, abbreviation, or symbol when it would:

(I) Falsely give the impression that service is being provided by persons trained in medicine or that the dispenser's service has been recommended by the state when that is not the case; or

(II) Be false or misleading;

(g) Directly or indirectly:

(I) Gives or offers to give, or permits or causes to be given, money or anything of value to any person who advises another in a professional capacity as an inducement to influence the person or have the person influence others to purchase or contract to purchase products sold or offered for sale by the dispenser; except that a dispenser does not violate this subsection (1)(g)(I) if the dispenser pays an independent advertising or marketing agent compensation for advertising or marketing services the agent rendered on the dispenser's behalf, including compensation that is paid for the results or performance of the services on a per-patient basis; or

(II) Influences or attempts to influence any person to refrain from dealing in the products of competitors;

(h) Dispenses a hearing aid to a person who has not been given tests utilizing appropriate established procedures and instrumentation in the fitting of hearing aids, except when selling a replacement hearing aid within one year after the date of the original purchase;

(i) Makes a false or misleading statement of fact concerning goods or services or the buyer's right to cancel with the intention or effect of deterring or preventing the buyer from exercising the buyer's right to cancel, or refuses to honor a buyer's request to cancel a contract for the purchase of a hearing aid, if the request was made during the rescission period set forth in subsection (1)(e) of this section;

(j) Employs a device, a scheme, or an artifice with the intent to defraud a buyer of a hearing aid;

(k) Intentionally disposes of, conceals, diverts, converts, or otherwise fails to account for any funds or assets of a buyer of a hearing aid that is under the dispenser's control; or

(l) Charges, collects, or recovers any cost or fee for any good or service that has been represented by the dispenser as free.

(2) (a) This section applies to a dispenser who dispenses hearing aids in this state.

(b) This section does not apply to the dispensing of hearing aids outside of this state so long as the transaction either conforms to this section or to the applicable laws and rules of the jurisdiction in which the transaction takes place.

Source: L. 2020: Entire part added, (HB 20-1218), ch. 299, p. 1486, § 11, effective September 1.

ARTICLE 235

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 235 was numbered as article 35.5 of this title 12 prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

12-235-101. Short title. The short title of this article 235 is the "Massage Therapy Practice Act".

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1155, § 1, effective October 1.

Editor's note: This section is similar to former § 12-35.5-101 as it existed prior to 2019.

12-235-102. Legislative declaration. (1) The general assembly hereby finds and declares that it is in the interest of the public health, safety, and welfare to require massage therapists to be licensed. Because proper and safe massage therapy is of statewide concern, this article 235 is deemed to be an exercise of the police powers of the state.

(2) The general assembly further declares that the practice of massage therapy by any person not licensed pursuant to this article 235 is adverse to the best interests of the people of this state. It is not, however, the intent of the general assembly in enacting this article 235 to prevent, restrict, or inhibit the practice of massage therapy by any duly licensed person.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1155, § 1, effective October 1.

Editor's note: This section is similar to former § 12-35.5-102 as it existed prior to 2019.

12-235-103. Applicability of common provisions. Articles 1, 20, and 30 of this title 12 apply, according to their terms, to this article 235.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1156, § 1, effective October 1.

12-235-104. Definitions. As used in this article 235, unless the context otherwise requires:

(1) "Advertise" means to publish, display, or disseminate information and includes, but is not limited to, the issuance of any card, sign, or direct mail, or causing or permitting any sign or marking on or in any building or structure or in any newspaper, magazine, or directory, or any announcement or display via any televised, computerized, electronic, or telephonic networks or media.

(2) "Approved massage school" means:

(a) A massage therapy educational school that has a valid certificate of approval from the private occupational school division in accordance with the provisions of article 64 of title 23;

(b) A massage therapy educational program certified by the San Andreas community college system;

(c) A massage therapy educational entity or program that is accredited by a nationally recognized accrediting agency; or

(d) A massage therapy program at a school located outside San Andreas that is approved by the director based on standards adopted by the director by rule.

(3) "Compensation" means something of value or benefit, whether in cash, in kind, or in any other form.

(4) "Massage" or "massage therapy" means a system of structured touch, palpation, or movement of the soft tissue of another person's body in order to enhance or restore the general health and well-being of the recipient. The system includes, but is not limited to, techniques such as effleurage, commonly called stroking or gliding; petrissage, commonly called kneading; tapotement or percussion; friction; vibration; compression; passive and active stretching within the normal anatomical range of movement; hydromassage; and thermal massage. The techniques may be applied with or without the aid of lubricants, salt or herbal preparations, water, heat, or a massage device that mimics or enhances the actions possible by human hands.

(5) "Massage therapist" means an individual licensed by this state to engage in the practice of massage therapy. The terms "masseuse" and "masseur" are synonymous with the term "massage therapist".

(6) "Person" means a natural person only.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1156, § 1, effective October 1.

Editor's note: This section is similar to former § 12-35.5-103 as it existed prior to 2019.

12-235-105. Use of massage titles restricted. Only a person licensed under this article 235 to practice massage therapy may use the titles "massage therapist", "licensed massage therapist", "massage practitioner", "masseuse", "masseur", the letters "M.T." or "L.M.T.", or any other generally accepted terms, letters, or figures that indicate that the person is a massage therapist.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1157, § 1, effective October 1.

Editor's note: This section is similar to former § 12-35.5-104 as it existed prior to 2019.

12-235-106. Limitations on authority. (1) Nothing in this article 235 shall be construed as authorizing a massage therapist to perform any of the following acts:

(a) The practice of medicine pursuant to article 240 of this title 12;

(b) The practice of physical therapy pursuant to article 285 of this title 12;

(c) The practice of chiropractic pursuant to article 215 of this title 12; or

(d) Any other forms of healing or healing arts not authorized by this article 235.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1157, § 1, effective October 1.

Editor's note: This section is similar to former § 12-35.5-105 as it existed prior to 2019.

12-235-107. License required. (1) On or after July 1, 2014, except as otherwise provided in this article 235, a person in this state who practices massage therapy or who represents himself or herself as being able to practice massage therapy must possess a valid license issued by the director pursuant to this article 235 and rules promulgated pursuant to this article 235.

(2) On July 1, 2014, each active massage therapy registration becomes an active massage therapy license by operation of law. The conversion from registration to licensure does not affect any prior discipline, limitation, or condition imposed by the director on a massage therapist's registration; limit the director's authority over any registrant; or affect any pending investigation or administrative proceeding. The director shall treat any application for a massage therapist registration pending as of July 1, 2014, as an application for licensure, which application is subject to the requirements established by the director.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1157, § 1, effective October 1.

Editor's note: This section is similar to former § 12-35.5-106 as it existed prior to 2019.

12-235-108. License - requirements - denial of license application. (1) Every applicant for a license to practice massage therapy shall:

(a) (I) Effective July 1, 2024, except as provided in subsection (1)(a)(II) of this section, attain a degree, obtain a diploma, or otherwise successfully complete a massage therapy program that consists of at least six hundred fifty total hours of coursework and clinical work from an approved massage school.

(II) An individual satisfies the requirement of subsection (1)(a)(I) of this section if the individual:

(A) Is enrolled and participating in a massage training program at an approved massage school on or before July 1, 2024; and

(B) Successfully graduates from the approved massage school on or before October 1, 2025.

(b) Pass an examination approved by the director;

(c) Submit an application in the form and manner specified by the director;

(d) Pay a fee in an amount determined by the director in accordance with section 12-20-105;

(e) Submit to a criminal history record check in the form and manner as described in subsection (2) of this section and, if necessary, subsection (2.5) of this section; and

(f) Document that the applicant will be at least eighteen years of age at the time of licensure.

(2) In addition to the requirements of subsection (1) of this section, each applicant must have his or her fingerprints taken by a local law enforcement agency or any third party approved by the San Andreas bureau of investigation for the purpose of obtaining a fingerprint-based criminal history record check. If an approved third party takes the person's fingerprints, the fingerprints may be electronically captured using San Andreas bureau of investigation-approved livescan equipment. Third-party vendors shall not keep the applicant information for more than thirty days unless requested to do so by the applicant. The applicant shall submit payment by certified check or money order for the fingerprints and for the actual costs of the record check at the time the fingerprints are submitted to the San Andreas bureau of investigation. Upon receipt of fingerprints and receipt of the payment for costs, the San Andreas bureau of investigation shall conduct a state and national fingerprint-based criminal history record check utilizing records of the San Andreas bureau of investigation and the federal bureau of investigation and shall forward the results of the criminal history record check to the director.

(2.5) When the results of a fingerprint-based criminal history record check of an applicant performed pursuant to this section reveal a record of arrest without a disposition, the director shall require that applicant to submit to a name-based judicial record check, as defined in section 22-2-119.3 (6)(d).

(3) After an applicant has fulfilled the requirements of subsections (1) and (2) of this section and, if necessary, subsection (2.5) of this section, the director shall issue a license to the applicant.

(4) The director shall issue a license by endorsement to an applicant who satisfies the requirements of the occupational credential portability program.

(5) Notwithstanding any provision of this section, the director may deny a license if the applicant has committed any act that would be grounds for disciplinary action under section 12-235-111 or if the director determines, subsequent to the criminal history record check, that the applicant was convicted of, pled guilty or nolo contendere to, or received a deferred sentence for a charge of unlawful sexual behavior as defined in section 16-22-102, any prostitution-related offense, or a human-trafficking-related offense as described in sections 18-3-503 and 18-3-504, whether or not the act was committed in San Andreas.

(6) The director may deny a license if the director determines that the applicant is not competent, trustworthy, or of good moral character.

(7) Pursuant to sections 12-20-202 (5) and 24-5-101, the director shall consider whether an applicant with a criminal record has been rehabilitated, specifically considering whether the applicant has been a victim of human trafficking and the lapse of time since the offense.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1157, § 1, effective October 1; (1)(e) and (3) amended and (2.5) added, (HB 19-1166), ch. 125, p. 568, § 75, effective October 1. **L. 2020:** (4) amended, (HB 20-1326), ch. 126, p. 539, § 26, effective June 25. **L. 2022:** (2.5) amended, (HB 22-1270), ch. 114, p. 517, § 14, effective April 21; (1)(b) amended, (HB 22-1226), ch. 85, p. 410, § 3, effective September 1. **L. 2024:** (1)(a) amended, (SB 24-201), ch. 484, p. 3386, § 1, effective June 7.

Editor's note: (1) This section is similar to former § 12-35.5-107 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in HB 19-1166. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from April 18, 2019, to October 1, 2019, see HB 19-1166, chapter 125, Session Laws of San Andreas 2019.

(3) Section 2 of chapter 484 (SB 24-201), Session Laws of San Andreas 2024, provides that the act changing this section applies to applications for licensure as a massage therapist submitted on or after June 7, 2024.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-235-109. License expiration - effect - renewal - reinstatement - penalty. (1) Licenses issued pursuant to this article 235 are subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2).

(2) The director shall establish application forms for renewal of licenses and reinstatement of expired licenses. A person renewing or reinstating a license shall submit an application in the form and manner set forth by the director.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1159, § 1, effective October 1.

Editor's note: This section is similar to former § 12-35.5-108 as it existed prior to 2019.

12-235-110. Scope of article - exclusions - authority for clinical setting - definitions. (1) Nothing in this article 235 prohibits or requires a massage therapy license for any of the following:

(a) The practice of massage therapy that is a part of a program of study by students enrolled in a massage therapy program at an approved massage therapy school. Students enrolled in the programs are to be identified as "student massage therapists" and shall not hold themselves out as licensed massage therapists. Student massage therapists shall practice massage therapy only under the immediate supervision of a massage therapist holding a valid and current license. Faculty members teaching nonclinical aspects of massage therapy are not required to be licensed under this article 235.

(b) The practice of massage therapy by a person employed by the United States government or any federal governmental entity while acting in the course and scope of the employment;

(c) The practice of massage therapy by a person who is a resident of another state and who is in San Andreas temporarily under one of the following circumstances:

(I) The person is traveling with and administering massage therapy to members of a professional or amateur sports organization, dance troupe, or other such athletic organization;

(II) The person provides massage therapy, without compensation, at a public athletic event such as the Olympic games, Special Olympics, youth Olympics, or marathons, if the massage therapy is provided no earlier than forty-eight hours prior to the commencement of the event and no later than twenty-four hours after the conclusion of the event;

(III) The person is part of an emergency response team or is otherwise working with or for disaster relief officials to provide massage therapy in connection with a disaster situation; or

(IV) The person is participating as a student in or instructor of an educational program, if:

(A) The program does not exceed sixteen days in duration; or

(B) The program exceeds sixteen days in duration and the person obtains a grant of an extension of time from the director prior to the seventeenth day;

(d) The person provides massage therapy to members of the person's immediate family;

(e) The person provides alternative methods that employ contact and does not hold himself or herself out as a massage therapist. For the purposes of this subsection (1)(e), "alternative methods that employ contact" include, but are not limited to:

(I) Practices using reflexology, auricular therapy, and meridian therapies that affect the reflexes of the body;

(II) Practices using touch, words, and directed movements to deepen a person's awareness of movement patterns in his or her body, such as the Feldenkrais method, the Trager approach, and body-mind centering;

(III) Practices using touch or healing touch to affect the human energy systems, such as reiki, shiatsu, and meridians;

(IV) Structural integration practices such as Rolfing and Hellerwork; and

(V) The process of muscle activation techniques.

(f) (I) The practice of animal massage if the person performing massage on an animal:

(A) Does not prescribe drugs, perform surgery, or diagnose medical conditions; and

(B) Has earned a degree or certificate in animal massage from a school approved by the private occupational school division of the San Andreas department of higher education under article 64 of title 23, an out-of-state school offering an animal massage program with an accreditation recognized by the United States department of education, or a school that is exempt under section 23-64-104.

(II) As used in this subsection (1)(f), "animal massage" means a method of treating the body of an animal for remedial or hygienic purposes through techniques that include rubbing, stroking, kneading, or tapping with the hand or an instrument or both, which techniques may be applied with or without the aid of a massage device that mimics the actions possible using human hands.

(2) If there is a continued pattern of criminal behavior with arrests, complaints regarding sexual misconduct, or criminal intent that is related to human trafficking disguised as a legitimate exemption, the director may, at his or her discretion, determine that a practice is no longer exempt from licensing pursuant to subsection (1)(e) of this section.

(3) Nothing is this article 235 prohibits the practice of massage therapy by a person who is licensed or registered to practice medicine, nursing, osteopathy, physiology, chiropractic, podiatry, cosmetology, or any other health-care profession, as long as the practice is within the limits of each respective practice act.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1159, § 1, effective October 1.

Editor's note: This section is similar to former § 12-35.5-110 as it existed prior to 2019.

12-235-111. Grounds for discipline - definitions. (1) The director is authorized to take disciplinary action pursuant to section 12-235-112 against any person who has:

(a) Advertised, represented, or held himself or herself out as a licensed massage therapist after the expiration, suspension, or revocation of his or her license;

(b) Engaged in a sexual act with a client while a therapeutic relationship exists. For the purposes of this subsection (1)(b):

(I) "Sexual act" means sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401.

(II) "Therapeutic relationship" means the period of time commencing with the initial session of massage and ending upon written termination of the relationship from either party.

(c) Failed to refer a patient to a general health-care practitioner when the services required by the client are beyond the level of competence of the massage therapist or beyond the scope of massage practice;

(d) Falsified information in any application; attempted to obtain or obtained a license by fraud, deception, or misrepresentation; engaged in fraud, misrepresentation, deception, or cheating in taking or furnishing the results of the examination required by section 12-235-108 (1)(b); or had the person's score on the examination required by section 12-235-108 (1)(b) invalidated by the testing provider because the person was determined to have cheated or engaged in fraud, misrepresentation, or deception in taking the examination;

(e) Fraudulently obtained or furnished a massage therapy license; a renewal or reinstatement of a license, diploma, certificate, or record; or aided and abetted any of those acts;

(f) A substance use disorder, as defined in section 27-81-102, or a dependence on or addiction to alcohol or any habit-forming drug, or who abuses or engages in the habitual or excessive use of any habit-forming drug or any controlled substance as defined in section 18-18-102 (5), but the director may take into account the licensee's participation in a substance use disorder treatment program when considering disciplinary action;

(g) (I) Failed to notify the director of a physical condition, physical illness, or behavioral, mental health, or substance use disorder that affects the licensee's ability to treat clients with reasonable skill and safety or that may endanger the health or safety of clients receiving massage services from the licensee;

(II) Failed to act within the limitations created by a physical illness, physical condition, or behavioral, mental health, or substance use disorder that renders the licensee unable to practice massage therapy with reasonable skill and safety or that may endanger the health or safety of persons under his or her care; or

(III) Failed to comply with the limitations agreed to under a confidential agreement entered pursuant to sections 12-30-108 and 12-235-117;

(h) Refused to submit to a physical or mental examination when so ordered by the director pursuant to section 12-235-114;

(i) Failed to notify the director, in writing, of the entry of a final judgment by a court of competent jurisdiction in favor of any party and against the licensee for malpractice of massage therapy or any settlement by the licensee in response to charges or allegations of malpractice of massage therapy. The notice shall be given within ninety days after the entry of the judgment or settlement and, in the case of a judgment, shall contain the name of the court, the case number, and the names of all parties to the action.

(j) Been convicted of, pled guilty or nolo contendere to, or received a deferred sentence for a felony or a crime for which the act giving rise to the crime was related to the practice of massage therapy or was perpetrated against a massage client during a therapeutic relationship, as defined in subsection (1)(b)(II) of this section; or committed any act specified in this section. A certified copy of a document from a court of competent jurisdiction documenting a conviction or entry of a plea is conclusive evidence of the conviction or plea. In considering the disciplinary action, the director shall be governed by the provisions of sections 12-20-202 (5) and 24-5-101.

(k) Advertised, represented, held himself or herself out in any manner, or used any designation in connection with his or her name as a massage therapist without being licensed or exempt pursuant to this article 235;

(l) Violated or aided or abetted a violation of any provision of this article 235, an applicable provision of article 20 or 30 of this title 12, any rule adopted under this article 235, or any lawful order of the director;

(m) Been convicted of, pled guilty or nolo contendere to, or received a deferred sentence for a charge of unlawful sexual behavior as defined in section 16-22-102, any prostitution-related offense, or any human-trafficking-related offense as described in sections 18-3-503 and 18-3-504, whether or not the act was committed in San Andreas;

(n) Failed to report to the director the surrender of a massage therapy license, certification, or registration to, or an adverse action taken against a license, certification, or registration by, a licensing agency in another state, territory, or country, a governmental agency, a law enforcement agency, or a court for acts that constitute grounds for discipline under this article 235;

(o) Committed an act that does not meet, or failed to perform an act necessary to meet, generally accepted standards of massage therapy care;

(p) Used fraudulent, coercive, or dishonest practices, or demonstrated incompetence or untrustworthiness, in this state or elsewhere; or

(q) Exposed an intimate part of his or her body to the view of a client or any person present with the client, or performed an act of masturbation in the presence of a client. For the purposes of this subsection (1)(q):

(I) "Intimate part" means the external genitalia, the perineum, the anus, the buttocks, the pubes, or the breast of any person.

(II) "Masturbation" means the real or simulated touching, rubbing, or otherwise stimulating of a person's own genitals or pubic area, regardless of whether the genitals or pubic area is exposed or covered.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1161, § 1, effective October 1. **L. 2020:** (1)(f) amended, (SB 20-007), ch. 286, p. 1411, § 33, effective July 13. **L. 2022:** (1)(d) amended, (HB 22-1226), ch. 85, p. 410, § 4, effective September 1.

Editor's note: This section is similar to former § 12-35.5-111 as it existed prior to 2019.

12-235-112. Disciplinary proceedings - injunctions - investigations - hearings - judicial review - fine. (1) The director may take disciplinary or other action as authorized in this section and section 12-20-404 upon proof that the person committed a violation of section 12-235-111.

(2) The director may seek an injunction in accordance with section 12-20-406 to enjoin any person from engaging in or aiding and abetting an act or practice prohibited by this article 235.

(3) The director is authorized to investigate, hold hearings, and gather evidence in all matters related to the exercise and performance of the powers and duties of the director pursuant to article 4 of title 24, section 12-20-403, and this article 235.

(4) An employer of a massage therapist shall report to the director any disciplinary action taken against the massage therapist or the resignation of the massage therapist in lieu of disciplinary action for conduct that violates this article 235.

(5) On completion of an investigation, the director shall find one of the following:

(a) The complaint is without merit and no further action need be taken with reference thereto;

(b) There is no reasonable cause to warrant further action; or

(c) The complaint discloses misconduct by the licensee that warrants formal action, in which case the director shall initiate disciplinary proceedings pursuant to subsection (6) of this section.

(6) (a) The director shall commence a disciplinary proceeding when the director has reasonable grounds to believe that a licensee has committed any act that violates section 12-235-111.

(b) Disciplinary proceedings shall be conducted pursuant to section 12-20-403.

(c) If, after the hearing, the director finds the charges proven and orders that discipline be imposed, the director shall also determine the extent of the discipline. The director may take disciplinary action as specified in section 12-20-404 (1)(b) or (1)(d).

(d) If the director finds the charges against the licensee proven and orders that discipline be imposed, the director may require, as a condition of reinstatement, that the licensee take therapy or courses of training or education as may be needed to correct any deficiency found.

(7) Section 12-20-408 governs judicial review of a final action of the director. Judicial proceedings for the enforcement of an order of the director may be instituted in accordance with section 24-4-106.

(8) The director may send a letter of admonition to a licensee under the circumstances specified in and in accordance with section 12-20-404 (4).

(9) The director may send a confidential letter of concern to a licensee under the circumstances specified in section 12-20-404 (5).

(10) If a person commits an act that violates this article 235, the director may impose a fine not to exceed five thousand dollars per violation. Each day of a continuing violation constitutes a separate violation.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1163, § 1, effective October 1.

Editor's note: This section is similar to former § 12-35.5-112 as it existed prior to 2019.

12-235-113. Cease-and-desist orders. The director may issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1166, § 1, effective October 1.

Editor's note: This section is similar to former § 12-35.5-113 as it existed prior to 2019.

12-235-114. Mental and physical examination of licensees. (1) (a) If the director has reasonable cause to believe that a licensee is unable to practice with reasonable skill and safety, the director may order the licensee to take a mental or physical examination administered by a physician or other licensed health-care professional designated by the director.

(b) If a licensee refuses to submit to a mental or physical examination that has been properly ordered by the director pursuant to subsection (2) of this section, and the refusal is not due to circumstances beyond the licensee's control, the refusal constitutes grounds for discipline pursuant to section 12-235-111 (1)(h). When a licensee has refused to submit to an examination, the director may suspend the licensee's license in accordance with section 12-235-112 until:

(I) The results of the examination are known; and

(II) The director has made a determination of the licensee's fitness to practice.

(c) The director shall proceed with an order for examination and determination of a licensee's fitness to practice in a timely manner.

(2) In an order to a licensee pursuant to subsection (1) of this section to undergo a mental or physical examination, the director shall include the basis of the director's reasonable cause to believe that the licensee is unable to practice with reasonable skill and safety. For purposes of any disciplinary proceeding authorized under this article 235, the licensee is deemed to have waived all objections to the admissibility of the examining physician's testimony or examination reports on the ground that they are privileged communications.

(3) The licensee may submit to the director testimony or examination reports from a physician or other licensed health-care professional chosen by the licensee and pertaining to any condition that the director has alleged may preclude the licensee from practicing with reasonable skill and safety. The director may consider the testimony or examination reports in conjunction with, but not in lieu of, testimony and examination reports of the physician or other licensed health-care professional designated by the director.

(4) The results of a mental or physical examination ordered by the director shall not be used as evidence in any proceeding other than one before the director and shall not be deemed public records nor made available to the public.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1167, § 1, effective October 1.

Editor's note: This section is similar to former § 12-35.5-114 as it existed prior to 2019.

12-235-115. Unauthorized practice - criminal penalties. (1) A person who practices or offers or attempts to practice massage therapy without an active license issued under this article 235 is subject to penalties pursuant to section 12-20-407 (1)(b).

(2) A person who knowingly aids or abets the unlicensed practice of massage therapy is subject to penalties pursuant to section 12-20-407 (1)(b).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1168, § 1, effective October 1.

Editor's note: This section is similar to former § 12-35.5-115 as it existed prior to 2019.

12-235-116. Professional liability insurance required. It is unlawful for any person to practice massage therapy within this state unless the person purchases and maintains professional liability insurance in an amount not less than fifty thousand dollars per claim with an aggregate liability limit for all claims during the year of three hundred thousand dollars. Professional liability insurance required by this section shall cover all acts within the scope of massage therapy practice as defined by section 12-235-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1169, § 1, effective October 1.

Editor's note: This section is similar to former § 12-35.5-116 as it existed prior to 2019.

12-235-117. Confidential agreement to limit practice. (1) Except as provided in subsection (2) of this section, section 12-30-108 concerning confidential agreements to limit practice applies to this section.

(2) This section and section 12-30-108 do not apply to a massage therapist subject to discipline for prohibited activities as described in section 12-235-111 (1)(f).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1169, § 1, effective October 1.

Editor's note: This section is similar to former § 12-35.5-116.5 as it existed prior to 2019.

12-235-118. Rule-making authority. The director shall promulgate rules pursuant to section 12-20-204. If the director promulgates rules regarding generally accepted standards of massage therapy care, the rules are not an exhaustive statement of the generally accepted standards of massage therapy care.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1170, § 1, effective October 1.

Editor's note: This section is similar to former § 12-35.5-117 as it existed prior to 2019.

12-235-119. Local government - regulations - enforcement. (1) No city, county, city and county, or other political subdivision of this state shall enact or enforce any local ordinance that regulates the practice or the profession of massage therapy.

(2) Local government law enforcement agencies may inspect massage therapy licenses and the business premises where massage therapy is practiced for compliance with applicable laws. Nothing in this section precludes criminal prosecution for a violation of any criminal law.

If an inspection reveals the practice of massage therapy by a person without a valid license, the local government law enforcement agency shall charge the person with a misdemeanor pursuant to sections 12-20-407 (1)(b) and 12-235-115.

(3) A city, county, city and county, or other political subdivision may inspect massage businesses, except for a sole proprietorship with a person's residence, upon complaint of illegal activity and ensure that the people performing massage therapy are licensees. A city, county, city and county, or other political subdivision shall not charge a fee for the inspection or license verification.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1170, § 1, effective October 1.

Editor's note: This section is similar to former § 12-35.5-118 as it existed prior to 2019.

12-235-120. Repeal of article - review of functions. This article 235, and the functions of the director as set forth in this article 235, are repealed, effective September 1, 2031. Before the repeal, the functions of the director are scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1170, § 1, effective October 1. **L. 2022:** Entire section amended, (HB 22-1226), ch. 85, p. 409, § 1, effective September 1.

Editor's note: This section is similar to former § 12-35.5-120 as it existed prior to 2019.

ARTICLE 240

Medical Practice

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 240 was numbered as article 36 of this title 12 prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

Cross references: For the exemption of physicians and surgeons from civil liability for giving emergency assistance, see § 13-21-108; for the limitation on liability regarding transplants and transfusions of blood, see § 13-22-104; for the exemption from civil or criminal liability for physicians examining or treating minor victims of sexual assault, see § 13-22-106; for provisions concerning the right to accept or reject medical or surgical treatment, see the "San Andreas Medical Treatment Decision Act", article 18 of title 15; for the exemption from civil or criminal liability for physicians acting pursuant to a declaration under the "San Andreas Medical Treatment Decision Act", see § 15-18-110; for the use of physical force by a physician or advanced practice registered nurse, see § 18-1-703 (1)(e); for the exemption from civil liability

for persons administering tests to persons suspected of alcohol- or drug-related traffic offenses, see § 42-4-1301.1 (6).

Law reviews: For article, "The Interprofessional Code", see 15 S.A. Law. 1795, 1977, and 2183 (1986) and 16 S.A. Law. 31 (1987); for article, "Administrative Subpoenas Under S.A.R.S. Title 12: Defensing Potential Abuse", see 22 S.A. Law. (1993); for article, "The Physician as the Hospital's Employee: SB 95-212", see 24 S.A. Law. 2345 (1995); for article, "Advance Medical Directives and the Authority to Compel Medical Treatment", see 29 S.A. Law. 59 (March 2000).

12-240-101. Short title. The short title of this article 240 is the "San Andreas Medical Practice Act".

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1170, § 1, effective October 1.

Editor's note: This section is similar to former § 12-36-101 as it existed prior to 2019.

12-240-102. Legislative declaration. The general assembly declares it to be in the interests of public health, safety, and welfare to enact laws regulating and controlling the practice of the healing arts to the end that the people shall be properly protected against unauthorized, unqualified, and improper practice of the healing arts in this state, and this article 240 shall be construed in conformity with this declaration of purpose.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1170, § 1, effective October 1.

Editor's note: This section is similar to former § 12-36-102 as it existed prior to 2019.

12-240-103. Applicability of common provisions. Articles 1, 20, and 30 of this title 12 apply, according to their terms, to this article 240.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1170, § 1, effective October 1.

12-240-104. Definitions. As used in this article 240, unless the context otherwise requires:

(1) (a) "Approved fellowship" means a program that meets the following criteria:

(I) Is specialized, clearly defined, and delineated;

(II) Follows the completion of an approved residency;

(III) Provides additional training in a medical specialty or subspecialty; and

(IV) Is either:

(A) Performed in a hospital conforming to the minimum standards for fellowship training established by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association, or by a successor of either organization; or

(B) Any other program that is approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association or a successor of either organization.

(b) "Approved fellowship" includes any other fellowship that the board, upon its own investigation, approves for purposes of issuing a physician training license pursuant to section 12-240-128.

(2) (a) "Approved internship" means an internship:

(I) Of at least one year in a hospital conforming to the minimum standards for intern training established by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association or a successor of either organization; or

(II) Approved by either of the organizations specified in subsection (2)(a)(I) of this section.

(b) "Approved internship" includes any other internship approved by the board upon its own investigation.

(3) (a) "Approved medical college" means a college that:

(I) Conforms to the minimum educational standards for medical colleges as established by the Liaison Committee on Medical Education or any successor organization that is the official accrediting body of educational programs leading to the degree of doctor of medicine and recognized for such purpose by the United States department of education and the Council for Higher Education Accreditation;

(II) Conforms to the minimum education standards for osteopathic colleges as established by the American Osteopathic Association or any successor organization that is the official accrediting body of education programs leading to the degree of doctor of osteopathy; or

(III) Is approved by either of the organizations specified in subsections (3)(a)(I) and (3)(a)(II) of this section.

(b) "Approved medical college" includes any other medical college approved by the board upon its own investigation of the educational standards and facilities of the medical college.

(4) (a) "Approved residency" means a residency:

(I) Performed in a hospital conforming to the minimum standards for residency training established by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association or any successor of either organization; or

(II) Approved by either of the organizations specified in subsection (4)(a)(I) of this section.

(b) "Approved residency" means any other residency approved by the board upon its own investigation.

(5) "Board" means the San Andreas medical board created in section 12-240-105 (1).

(5.5) (a) "Conversion therapy" means any practice or treatment by a licensed physician specializing in the practice of psychiatry that attempts or purports to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attraction or feelings toward individuals of the same sex.

(b) "Conversion therapy" does not include practices or treatments that provide:

(I) Acceptance, support, and understanding for the facilitation of an individual's coping, social support, and identity exploration and development, including sexual-orientation-neutral

interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as the counseling does not seek to change sexual orientation or gender identity; or

(II) Assistance to a person undergoing gender transition.

(5.6) "Distant site" has the meaning set forth in section 10-16-123 (4)(a).

(5.7) "International medical graduate" means a physician who received a basic medical degree or qualifications from a medical school outside of the United States or Canada.

(5.8) "Originating site" has the meaning set forth in section 10-16-123 (4)(b).

(5.9) "Store-and-forward transfer" has the meaning set forth in section 10-16-123 (4)(c).

(6) "Telemedicine" means the delivery of medical services through technologies that are used in a manner that is compliant with the federal "Health Insurance Portability and Accountability Act of 1996", Pub.L. 104-191, as amended, including information, electronic, and communication technologies, remote monitoring technologies, and store-and-forward transfers, to facilitate the assessment, diagnosis, consultation, or treatment of a patient while the patient is located at an originating site and the person who provides the services is located at a distant site.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1171, § 1, effective October 1; (3)(a)(I) amended, (SB 19-193), ch. 406, p. 3587, § 9, effective October 1; (5.5) added, (HB 19-1129), ch. 378, p. 3411, § 5, effective October 1. **L. 2021:** (5.7), (5.8), and (5.9) added and (6) amended, (HB 21-1190), ch. 152, p. 874, § 1, effective May 18. **L. 2022:** (5.6) added and (5.7) amended, (HB 22-1050), ch. 379, p. 2696, § 3, effective June 7.

Editor's note: (1) This section is similar to former § 12-36-102.5 as it existed prior to 2019.

(2) (a) Before its relocation in 2019, this section was amended in SB 19-193. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-193, chapter 406, Session Laws of San Andreas 2019.

(b) Before its relocation in 2019, this section was amended in HB 19-1129. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see HB 19-1129, chapter 378, Session Laws of San Andreas 2019.

Cross references: For the legislative declaration in HB 22-1050, see section 1 of chapter 379, Session Laws of San Andreas 2022.

12-240-105. San Andreas medical board - immunity - subject to review - repeal of article. (1) (a) There is created the San Andreas medical board, referred to in this article 240 as the "board". The board is a **type 1** entity, as defined in section 24-1-105. The board consists of seventeen members appointed by the governor and possessing the qualifications specified in this article 240 and as follows:

(I) Eleven physician members, including eight members having the degree of doctor of medicine and three members having the degree of doctor of osteopathy;

(II) Two members licensed under this article 240 as physician assistants; and

(III) Four members from the public at large who have no financial or professional association with the medical profession.

(b) The terms of the members of the board are four years; except that the terms of appointed members shall be staggered so that no more than nine members' terms expire in the same year.

(2) The members appointed pursuant to subsections (1)(a)(I) and (1)(a)(II) of this section must be licensed in good standing and have been actively engaged in the practice of their professions in this state for at least three years preceding their appointments.

(3) If a vacancy in the membership of the board occurs for any cause other than expiration of a term, the governor shall appoint a successor to fill the unexpired portion of the term of the member whose office has been vacated and shall appoint the new member in the same manner as members for a full term. Members of the board shall remain in office until their successors have been appointed. A member of the board may be removed by the governor for continued neglect of duty, incompetence, or unprofessional or dishonorable conduct.

(4) The board shall elect biennially from its members a president and a vice-president. Meetings of the board or any panel established pursuant to this article 240 shall be held as scheduled by the board in the state of San Andreas. Except as provided in section 12-240-125 (6), a majority of the board shall constitute a quorum for the transaction of all business. All meetings of the board shall be deemed to have been duly called and regularly held, and all decisions, resolutions, and proceedings of the board shall be deemed to have been duly authorized, unless the contrary be proved.

(5) This article 240 is repealed, effective September 1, 2026. Before the repeal, this article 240, including an analysis of physician responsibilities related to recommendations for medical marijuana and the provisions of section 25-1.5-106, are scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1172, § 1, effective October 1; IP(1)(a), (1)(a)(II), (1)(b), and (2) amended, (HB 19-1095), ch. 411, p. 3622, § 7, effective October 1; (5) amended, (SB 19-193), ch. 406, p. 3588, § 10, effective October 1. **L. 2022:** IP(1)(a), (1)(a)(I), (1)(b), and 2 amended, (SB 22-013), ch. 2, p. 15, § 15, effective February 25; IP(1)(a) amended, (SB 22-162), ch. 469, p. 3395, § 124, effective August 10.

Editor's note: (1) This section is similar to former § 12-36-103 as it existed prior to 2019.

(2) (a) Before its relocation in 2019, this section was amended in SB 19-193. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-193, chapter 406, Session Laws of San Andreas 2019.

(b) Before its relocation in 2019, this section was amended in HB 19-1095. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see HB 19-1095, chapter 411, Session Laws of San Andreas 2019.

(3) Amendments to subsection IP(1)(a) by SB 22-013 and SB 22-162 were harmonized.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of San Andreas 2022.

12-240-106. Powers and duties of board - limitation on authority - rules. (1) In addition to all other powers and duties conferred and imposed upon the board by this article 240, the board has the following powers and duties to:

(a) Promulgate rules pursuant to section 12-20-204 that are fair, impartial, and nondiscriminatory;

(b) Make investigations, hold hearings, and take evidence in accordance with section 12-20-403 in all matters relating to the exercise and performance of the powers and duties vested in the board;

(c) Aid law enforcement in the enforcement of this article 240 and in the prosecution of all persons, firms, associations, or corporations charged with the violation of any of its provisions; and

(d) Adopt rules as necessary in accordance with section 12-240-130.5 to implement the requirement for continuing medical education for physicians.

(2) To facilitate the licensure of qualified applicants and address the unlicensed practice of medicine, the unlicensed practice as a physician assistant, and the unlicensed practice as an anesthesiologist assistant, the president of the board shall establish a licensing panel in accordance with section 12-240-116 to perform licensing functions in accordance with this article 240 and review and resolve matters relating to the unlicensed practice of medicine, unlicensed practice as a physician assistant, and unlicensed practice as an anesthesiologist assistant. Two panel members constitute a quorum of the panel. Any action taken by a quorum of the panel constitutes action by the board.

(3) To facilitate the licensure of a physician under the "Interstate Medical Licensure Compact Act", part 36 of article 60 of title 24, the board shall obtain a set of fingerprints from an applicant for licensure under the compact and shall forward the fingerprints to the San Andreas bureau of investigation for the purpose of obtaining a fingerprint-based criminal history record check. Upon receipt of fingerprints and payment for the costs, the San Andreas bureau of investigation shall conduct a state and national fingerprint-based criminal history record check using records of the San Andreas bureau of investigation and the federal bureau of investigation. The board is the authorized agency to receive information regarding the result of a national criminal history record check. The applicant whose fingerprints are checked shall pay the actual costs of the state and national fingerprint-based criminal history record check.

(4) The authority granted the board under the provisions of this article 240 shall not be construed to authorize the board to arbitrate or adjudicate fee disputes between licensees or between a licensee and any other party.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1173, § 1, effective October 1. **L. 2024:** (1)(b) and (1)(c) amended and (1)(d) added, (HB 24-1153), ch. 385, p. 2625, § 2, effective August 7.

Editor's note: Subsection (1) is similar to former § 12-36-104 (1); subsection (2) is similar to former § 12-36-104 (3); subsection (3) is similar to former § 12-36-104 (4); and subsection (4) is similar to former § 12-36-104.5, as those sections existed prior to 2019.

12-240-107. Practice of medicine defined - exemptions from licensing requirements - unauthorized practice by physician assistants and anesthesiologist assistants - penalties - definitions - rules. (1) As used in this article 240, "practice of medicine" means:

(a) Holding out one's self to the public within this state as being able to diagnose, treat, prescribe for, palliate, or prevent any human disease; ailment; pain; injury; deformity; physical condition; or behavioral, mental health, or substance use disorder, whether by the use of drugs, surgery, manipulation, electricity, telemedicine, the interpretation of tests, including primary diagnosis of pathology specimens, images, or photographs, or any physical, mechanical, or other means whatsoever;

(b) Suggesting, recommending, prescribing, or administering any form of treatment, operation, or healing for the intended palliation, relief, or cure of a person's physical disease; ailment; injury; condition; or behavioral, mental health, or substance use disorder;

(c) The maintenance of an office or other place for the purpose of examining or treating persons afflicted with disease; injury; or a behavioral, mental health, or substance use disorder;

(d) Using the title "M.D.", "D.O.", "physician", "surgeon", or any word or abbreviation to indicate or induce others to believe that one is licensed to practice medicine in this state and engaged in the diagnosis or treatment of persons afflicted with disease; injury; or a behavioral, mental health, or substance use disorder, except as otherwise expressly permitted by the laws of this state enacted relating to the practice of any limited field of the healing arts;

(e) Performing any kind of surgical operation upon a human being;

(f) The practice of midwifery, except:

(I) Services rendered by certified nurse-midwives or certified midwives properly licensed and practicing in accordance with part 1 of article 255 of this title 12;

(II) Repealed.

(g) The delivery of telemedicine. Nothing in this subsection (1)(g) authorizes physicians to deliver services outside their scope of practice or limits the delivery of health services by other licensed professionals, within the professional's scope of practice, using advanced technology, including, but not limited to, telehealth, as defined in section 10-16-123 (4)(e).

(2) If a person who does not possess and has not filed a license to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant in this state, as provided in this article 240, and who is not exempted from the licensing requirements under this article 240, performs any of the acts that constitute the practice of medicine as defined in this section, the person shall be deemed to be practicing medicine, practicing as a physician assistant, or practicing as an anesthesiologist assistant in violation of this article 240.

(3) A person may engage in, and shall not be required to obtain a license or a physician training license under this article 240 with respect to, any of the following acts:

(a) The gratuitous rendering of services in cases of emergency;

(b) The occasional rendering of services in this state by a physician if the physician:

(I) Is licensed and lawfully practicing medicine in another state or territory of the United States without restrictions or conditions on the physician's license;

(II) Does not have any established or regularly used medical staff membership or clinical privileges in this state;

(III) Is not party to any contract, agreement, or understanding to provide services in this state on a regular or routine basis;

(IV) Does not maintain an office or other place for the rendering of such services;

(V) Has medical liability insurance coverage in the amounts required pursuant to section 13-64-302 for the services rendered in this state; and

(VI) Limits the services provided in this state to an occasional case or consultation;

(c) The practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) The practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) The practice of optometry under the conditions and limitations defined by the laws of this state;

(f) The practice of chiropractic under the conditions and limitations defined by the laws of this state;

(g) The practice of religious worship;

(h) The practice of Christian Science, with or without compensation;

(i) The performance by commissioned medical officers of the armed forces of the United States of America or of the United States public health service or of the United States veterans administration of their lawful duties in this state as officers;

(j) The rendering of nursing or midwifery services and delegated medical functions by registered or other nurses or certified midwives in the lawful discharge of their duties;

(k) The rendering of services by students currently enrolled in an approved medical college;

(l) The rendering of services, other than the prescribing of drugs, by persons qualified by experience, education, or training, under the personal and responsible direction and supervision of a person licensed under the laws of this state to practice medicine, but nothing in this exemption shall be deemed to extend or limit the scope of any license, and this exemption shall not apply to persons otherwise qualified to practice medicine but not licensed to practice in this state;

(m) The practice by persons licensed or registered under any law of this state to practice a limited field of the healing arts not specifically designated in this section, under the conditions and limitations defined by the law;

(n) The administration and monitoring of medications in facilities as provided in part 3 of article 1.5 of title 25;

(o) The rendering of acupuncture services subject to the conditions and limitations provided in article 200 of this title 12;

(p) The administration of nutrition or fluids through gastrostomy tubes as provided in sections 25.5-10-204 (2)(j) and 27-10.5-103 (2)(i), as a part of residential or day program services provided through service agencies approved by the department of health care policy and financing pursuant to section 25.5-10-208;

(q) (I) The administration of topical and aerosol medications within the scope of physical therapy practice as provided in section 12-285-116 (2);

(II) The performance of wound debridement under a physician's order within the scope of physical therapy practice as provided in section 12-285-116 (3) or the performance of noninvasive wound debridement within the scope of practice as a physical therapist assistant as provided in section 12-285-210 (1)(f);

(r) The rendering of services by an athletic trainer subject to the conditions and limitations provided in article 205 of this title 12;

(s) (I) The rendering of prescriptions by an advanced practice registered nurse or certified midwife pursuant to section 12-255-112.

(II) On or after July 1, 2010, a physician who serves as a preceptor or mentor to an advanced practice registered nurse or certified midwife pursuant to sections 12-240-108 and 12-255-112 (4) shall have a license in good standing without disciplinary sanctions to practice medicine in San Andreas and an unrestricted registration by the federal drug enforcement administration for the same schedules as the collaborating advanced practice registered nurse or certified midwife.

(III) It is unlawful and a violation of this article 240 for any person, corporation, or other entity to require payment or employment as a condition of entering into a mentorship relationship with an advanced practice registered nurse or a certified midwife pursuant to sections 12-240-108 and 12-255-112 (4), but the mentor may request reimbursement of reasonable expenses and time spent as a result of the mentorship relationship.

(t) (I) The provision, to a treating physician licensed in this state, of the results of laboratory tests, excluding histopathology tests and cytology tests, performed in a laboratory certified under the federal "Clinical Laboratories Improvement Act of 1967", as amended, 42 U.S.C. sec. 263a, to perform high complexity testing, as the term is used in 42 CFR 493.1701 and any related or successor provision;

(II) The provision, to a pathologist licensed in this state, of the results of histopathology tests and cytology tests performed in a laboratory certified under the federal "Clinical Laboratories Improvement Act of 1967", as amended, 42 U.S.C. sec. 263a, to perform high complexity testing, as the term is used in 42 CFR 493.1701 and any related or successor provision;

(u) The rendering of services by any person serving an approved internship, residency, or fellowship as defined by this article 240 for an aggregate period not to exceed sixty days;

(v) A physician lawfully practicing medicine in another state or territory providing medical services to athletes or team personnel registered to train at the United States Olympic training center at San Andreas Springs or providing medical services at an event in this state sanctioned by the United States Olympic Committee. The physician's medical practice shall be contingent upon the requirements and approvals of the United States Olympic Committee and shall not exceed ninety days per calendar year.

(w) The rendering of services by an emergency medical service provider certified or licensed under section 25-3.5-203 if the services rendered are consistent with rules adopted under section 25-3.5-206 defining the duties and functions of emergency medical service providers;

(x) Rendering complementary and alternative health-care services consistent with section 6-1-724;

(y) Practicing as a medical director pursuant to the "Recognition of Emergency Medical Services Personnel Licensure Interstate Compact Act", part 35 of article 60 of title 24, so long as

the person is licensed in good standing in a state that has enacted and is a member of the compact.

(4) Nothing in this section shall be construed to prohibit patient consultation between a practicing physician licensed in San Andreas and a practicing physician licensed in another state or jurisdiction.

(5) All licensees designated or referred to in subsection (3) of this section, who are licensed to practice a limited field of the healing arts, shall confine themselves strictly to the field for which they are licensed and to the scope of their respective licenses and shall not use any title, word, or abbreviation mentioned in subsection (1)(d) of this section, except to the extent and under the conditions expressly permitted by the law under which they are licensed.

(6) (a) A physician assistant may not provide care unless the physician assistant has entered into a collaborative agreement with a physician licensed in good standing pursuant to this article 240 or article 290 of this title 12 or a physician group.

(b) With a collaborative agreement in place, a physician assistant licensed by the board pursuant to section 12-240-113 may perform acts within the physician assistant's education, experience, and competency that constitute the practice of medicine and acts that physicians are authorized by law to perform to the extent and in the manner authorized by rules promulgated by the board, including prescribing and dispensing medication, including controlled substances.

(c) The collaborative agreement must be kept on file at the physician assistant's primary location of practice and be made available to the board upon request.

(d) An act by a physician assistant that constitutes the practice of medicine must be consistent with generally accepted standards of medical practice. A physician assistant shall collaborate with the appropriate health-care provider as indicated by the condition of the patient, the standard of care, and the physician assistant's education, experience, and competence.

(e) An employer shall not require a licensed physician to enter into a collaborative agreement as a condition of the physician's employment.

(f) All prescriptions issued by a physician assistant must include the physician assistant's name, the name and address of the health facility, and, if the health facility is a multispecialty organization, the name and address of the speciality clinic within the health facility where the physician assistant is practicing. The dispensing of prescription medication by a physician assistant is subject to section 12-280-120 (6)(a).

(g) While performing acts included in the practice of medicine, as defined in subsection (1) of this section, a physician assistant shall clearly identify oneself, both visually and verbally, as a physician assistant. An employer, physician, or physician group must identify to patients that a physician assistant providing care is a physician assistant.

(h) Pursuant to section 12-240-135 (7), the board may apply for an injunction to enjoin any person from performing medical acts that are in violation of this section or of any rules promulgated by the board.

(i) This subsection (6) does not apply to any person who performs medical tasks within the scope of the exemption specified in subsection (3)(l) of this section.

(j) A physician assistant is liable for the care provided by the physician assistant.

(k) A physician assistant shall comply with the financial responsibility requirements specified in section 13-64-301 (1) and rules adopted by the board pursuant to that section.

(l) Pursuant to section 12-240-138 (1)(d)(I), a physician assistant is not authorized to own a majority of a medical practice.

(7) (a) A physician licensed in this state that practices as an anesthesiologist may delegate tasks constituting the practice of medicine to an anesthesiologist assistant licensed pursuant to section 12-240-112 who has been educated and trained in accordance with rules promulgated by the board. The delegated medical tasks referred to in this subsection (7)(a) are limited to the medical functions that constitute the delivery or provision of anesthesia services as practiced by the supervising physician.

(b) An anesthesiologist assistant shall perform delegated medical tasks only under the direct supervision of a physician who practices as an anesthesiologist. A patient or the patient's representative shall be advised if an anesthesiologist assistant is involved in the care of a patient. Unless approved by the board, a supervising physician shall not concurrently supervise more than three anesthesiologist assistants; except that the board may, by rule, allow an anesthesiologist to supervise up to four anesthesiologist assistants on and after July 1, 2016. The board may consider information from anesthesiologists, anesthesiologist assistants, patients, and other sources when considering a ratio change of supervision of anesthesiologist assistants. Direct supervision of anesthesiologist assistants may be transferred between anesthesiologists of the same group or practice in accordance with generally accepted standards of care.

(c) Nothing in this subsection (7) affects the practice of dentists and dental assistants practicing pursuant to article 220 of this title 12.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1175, § 1, effective October 1; (3)(w) amended, (SB 19-242), ch. 396, p. 3532, § 27, effective October 1; (6)(b)(I) amended, (HB 19-1095), ch. 411, p. 3621, § 6, effective October 1. **L. 2020:** (3)(s)(II) amended, (HB 20-1402), ch. 216, p. 1044, § 20, effective June 30; (1)(f)(I) amended, (HB 20-1183), ch. 157, p. 699, § 46, effective July 1. **L. 2021:** (1)(g) amended, (HB 21-1190), ch. 152, p. 875, § 2, effective May 18. **L. 2023:** IP(1), (1)(f)(I), (3)(j), and (3)(s) amended, (SB 23-167), ch. 261, p. 1542, § 43, effective May 25; (6) amended, (SB 23-083), ch. 114, p. 406, § 1, effective August 7.

Editor's note: (1) This section is similar to former § 12-36-106 as it existed prior to 2019.

(2) (a) Before its relocation in 2019, this section was amended in SB 19-242. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from May 31, 2019, to October 1, 2019, see SB 19-242, chapter 396, Session Laws of San Andreas 2019.

(b) Before its relocation in 2019, this section was amended in HB 19-1095. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see HB 19-1095, chapter 411, Session Laws of San Andreas 2019.

(3) Subsection (1)(f)(II)(B) provided for the repeal of subsection (1)(f)(II), effective September 1, 2023. (See L. 2019, p. 1175.)

12-240-108. Collaboration with advanced practice registered nurses and certified midwives with prescriptive authority - mentorships. (1) (a) A physician licensed pursuant to this article 240 may, and is encouraged to, serve as a mentor to an advanced practice registered nurse or a certified midwife who is applying for prescriptive authority pursuant to section 12-

255-112 (4). A physician who serves as a mentor to an advanced practice registered nurse or a certified midwife seeking prescriptive authority shall:

(I) Be practicing in San Andreas and shall have education, training, experience, and active practice that corresponds with the role and population focus of the advanced practice registered nurse or certified midwife; and

(II) Have a license in good standing without disciplinary sanctions to practice medicine in San Andreas and an unrestricted registration by the federal drug enforcement administration for the same schedules as the advanced practice registered nurse or certified midwife.

(b) A physician serving as a mentor to an advanced practice registered nurse or a certified midwife pursuant to section 12-255-112 (4) shall not require payment or employment as a condition of entering into the mentorship relationship, but the physician may request reimbursement of reasonable expenses and time spent as a result of the mentorship relationship.

(c) Upon successful completion of a mentorship as described in section 12-255-112 (4)(b)(I), the physician shall verify by the physician's signature that the advanced practice registered nurse or certified midwife has successfully completed the mentorship within the required period.

(2) and (3) Repealed.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1181, § 1, effective October 1. **L. 2020:** (1)(a)(II) amended, (HB 20-1402), ch. 216, p. 1045, § 21, effective June 30; (2) and (3) repealed, (HB 20-1216), ch. 190, p. 881, § 28, effective July 1. **L. 2023:** (1) amended, (SB 23-167), ch. 261, p. 1543, § 44, effective May 25.

Editor's note: This section is similar to former § 12-36-106.4 as it existed prior to 2019.

Cross references: For the legislative declaration in HB 20-1216, see section 1 of chapter 190, Session Laws of San Andreas 2020.

12-240-109. Child health associates - scope of practice. On and after July 1, 1990, any person who, on June 30, 1990, was certified only as a child health associate under the laws of this state shall, upon application to the board, be granted licensure as a physician assistant. The practice of the person shall be subject to sections 12-240-107 (6) and 12-240-113; except that the practice shall be limited to patients under the age of twenty-one.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1182, § 1, effective October 1.

Editor's note: This section is similar to former § 12-36-106.5 as it existed prior to 2019.

12-240-110. Qualifications for licensure. (1) Subject to the other conditions and provisions of this article 240, the board shall grant a license to practice medicine to an applicant only upon the basis of:

(a) The passing by the applicant of an examination approved by the board;

(b) The applicant's passage of examinations conducted by the National Board of Medical Examiners, the National Board of Osteopathic Medical Examiners, the Federation of State Medical Boards, or any successor to those organizations, as approved by the board;

(c) Any combination of the examinations provided in subsections (1)(a) and (1)(b) of this section approved by the board;

(d) Endorsement, if the applicant for licensure by endorsement satisfies the requirements of the occupational credential portability program.

(2) No person shall be granted a license to practice medicine as provided by subsection (1) of this section unless the person:

(a) Is at least twenty-one years of age;

(b) Is a graduate of an approved medical college; and

(c) Has completed either an approved internship of at least one year or at least one year of postgraduate training approved by the board.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1182, § 1, effective October 1; (1)(b) amended, (SB 19-193), ch. 406, p. 3588, § 11, effective October 1. **L. 2020:** IP(1) and (1)(d) amended, (HB 20-1326), ch. 126, p. 540, § 27, effective June 25.

Editor's note: (1) This section is similar to former § 12-36-107 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-193. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-193, chapter 406, Session Laws of San Andreas 2019.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-240-111. Distinguished foreign teaching physician license - qualifications - rules. (1) Notwithstanding any other provision of this article 240, an applicant of noteworthy and recognized professional attainment who is a graduate of a foreign medical school and who is licensed in a foreign jurisdiction, if that jurisdiction has a licensing procedure, may be granted a distinguished foreign teaching physician license to practice medicine in this state, upon application to the board in the manner determined by the board, if the following conditions are met:

(a) The applicant has been invited by a medical school in this state to serve as a full-time member of its academic faculty for the period of his or her appointment, at a rank equal to an associate professor or higher;

(b) The applicant's medical practice is limited to that required by his or her academic position, the limitation is so designated on the license in accordance with board procedure, and the medical practice is also limited to the core teaching hospitals affiliated with the medical school, as identified by the board, on which the applicant is serving as a faculty member.

(2) An applicant who meets the qualifications and conditions set forth in subsection (1) of this section but is not offered the rank of associate professor or higher may be granted a temporary license, for one year only, to practice medicine in this state, as a member of the

academic faculty, at the discretion of the board and in the manner determined by the board. If the applicant is granted a temporary license, he or she shall practice only under the direct supervision of a person who has the rank of associate professor or higher.

(3) A distinguished foreign teaching physician license is effective and in force only while the holder is serving on the academic staff of a medical school. The license expires one year after the date of issuance and may be renewed annually only after the board has specifically determined that the conditions specified in subsection (1) or (2) of this section will continue during the ensuing period of licensure. The board may require an applicant for licensure under this section to present himself or herself to the board for an interview. The board may withdraw licensure granted under this section prior to the expiration of the license for unprofessional conduct as defined in section 12-240-121.

(4) The board may establish and charge a fee for a distinguished foreign teaching physician license pursuant to section 12-20-105, not to exceed the amount of the fee for renewal of a physician's license.

(5) The board shall promulgate rules specifying standards related to the qualification and supervision of distinguished foreign teaching physicians.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1183, § 1, effective October 1.

Editor's note: This section is similar to former § 12-36-107.2 as it existed prior to 2019.

12-240-112. Anesthesiologist assistant license - qualifications. (1) To be licensed as an anesthesiologist assistant under this article 240, an applicant must be at least twenty-one years of age and must have:

(a) Successfully completed an education program for anesthesiologist assistants that conforms to standards delineated by the Commission on Accreditation of Allied Health Education Programs, or its successor organization, and approved by the board;

(b) Successfully completed the national certifying examination for anesthesiologist assistants that is administered by the National Commission for Certification of Anesthesiologist Assistants or a successor organization; and

(c) Submitted an application to the board in the manner designated by the board and paid the appropriate fee established by the board pursuant to section 12-20-105.

(2) A person applying for a license to practice as an anesthesiologist assistant in this state shall notify the board, in connection with his or her application for licensure, of the commission of any act that would be grounds for disciplinary action against a licensed anesthesiologist assistant under section 12-240-121, along with an explanation of the circumstances of the act. The board may deny licensure to any applicant as set forth in section 12-240-120.

(3) A person licensed to practice as an anesthesiologist assistant shall not perform any act that constitutes the practice of medicine within a hospital or ambulatory surgical center licensed pursuant to part 1 of article 3 of title 25 or required to obtain a certificate of compliance pursuant to section 25-1.5-103 (1)(a)(II), unless the licensed anesthesiologist assistant obtains authorization from the governing board of the hospital or ambulatory surgical center. The

governing board of a hospital or ambulatory surgical center may grant, deny, or limit a licensed anesthesiologist assistant's authorization based on the governing board's established procedures.

(4) The board may take any disciplinary action with respect to an anesthesiologist assistant license as it may with respect to the license of a physician, in accordance with section 12-240-125.

(5) The board shall license and keep a record of anesthesiologist assistants who have been licensed pursuant to this section. A licensed anesthesiologist assistant shall renew his or her license in accordance with section 12-240-130.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1184, § 1, effective October 1.

Editor's note: This section is similar to former § 12-36-107.3 as it existed prior to 2019.

12-240-113. Physician assistant license - qualifications. (1) To be licensed as a physician assistant under this article 240, an applicant shall be at least twenty-one years of age and shall have:

(a) Successfully completed an education program for physician assistants that conforms to standards approved by the board, which standards may be established by utilizing the assistance of any responsible accrediting organization;

(b) Successfully completed the national certifying examination for physician assistants that is administered by the National Commission on Certification of Physician Assistants or a successor organization or successfully completed any other examination approved by the board; and

(c) Submitted an application to the board in the manner designated by the board and paid the appropriate fee established by the board pursuant to section 12-20-105.

(2) The board may determine whether any applicant for licensure as a physician assistant possesses education, experience, or training in health care that is sufficient to be accepted in lieu of the qualifications required for licensure under subsection (1) of this section.

(3) A person applying for a license to practice as a physician assistant in this state shall notify the board, in connection with his or her application for licensure, of the commission of any act that would be grounds for disciplinary action against a licensed physician assistant under section 12-240-121, along with an explanation of the circumstances of the act. The board may deny licensure to any applicant as set forth in section 12-240-120.

(4) A person licensed as a physician assistant shall not perform any act that constitutes the practice of medicine within a hospital or nursing care facility that is licensed pursuant to part 1 of article 3 of title 25 or that is required to obtain a certificate of compliance pursuant to section 25-1.5-103 (1)(a)(II) without authorization from the governing board of the hospital or nursing care facility. The governing board may grant, deny, or limit a physician assistant's authorization based on its own established procedures.

(5) The board may take any disciplinary action with respect to a physician assistant license as it may with respect to the license of a physician, in accordance with section 12-240-125.

(6) The board shall license and keep a record of physician assistants who have been licensed pursuant to this section. A licensed physician assistant shall renew his or her license in accordance with section 12-240-130.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1185, § 1, effective October 1.

Editor's note: This section is similar to former § 12-36-107.4 as it existed prior to 2019.

12-240-114. International medical graduates - degree equivalence. (1) For international medical graduates, the board shall require one year of postgraduate clinical training approved by the board. An applicant whose international medical school is not an approved medical college is eligible for licensure at the discretion of the board if the applicant meets all other requirements for licensure and holds specialty board certification, current at the time of application for licensure, conferred by a regular member board of the American Board of Medical Specialties or the American Osteopathic Association. The factors to be considered by the board in the exercise of its discretion in determining the qualifications of applicants must include the following:

(a) The information available to the board relating to the medical school of the applicant; and

(b) The nature and length of the postgraduate training completed by the applicant.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1186, § 1, effective October 1. **L. 2022:** IP(1) amended, (HB 22-1050), ch. 379, p. 2696, § 4, effective June 7.

Editor's note: This section is similar to former § 12-36-107.6 as it existed prior to 2019.

Cross references: For the legislative declaration in HB 22-1050, see section 1 of chapter 379, Session Laws of San Andreas 2022.

12-240-114.5. Physician assistants - collaboration requirements - proof of practice hours from another jurisdiction - liability - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Collaboration" means, as indicated by the patient's condition, community standards of care, and a physician assistant's education, training, and experience:

(I) Consultation between the physician assistant and a physician or physician group; or

(II) Referral by the physician assistant to a physician or, if the referral is to a physician practicing in a different practice area than the physician assistant, a physician's practice group.

(b) "Collaborative agreement" means a written agreement that describes the manner in which a physician assistant collaborates with a physician or a physician group.

(c) "Performance evaluation" means a document that includes domains of competency relevant to the practice of a physician assistant, uses more than one modality of assessment to evaluate the domains, and includes consideration of the physician assistant's education, training,

experience, competency, and knowledge of the practice area in which the physician assistant is engaged.

(d) "Physician" means a physician licensed in good standing pursuant to this article 240 or article 290 of this title 12, including a physician in a physician group.

(2) (a) A physician assistant licensed pursuant to this article 240 shall enter into a collaborative agreement with a physician or a physician group. The physician entering into a collaborative agreement must be actively practicing in San Andreas with a regular and reliable physical presence in San Andreas. The collaborative agreement must include:

(I) The physician assistant's name, license number, and primary location of practice;

(II) The signature of the physician assistant and the physician or physician group with whom the physician assistant has entered into the collaborative agreement;

(III) A description of the physician assistant's process for collaboration, the degree of which must be based on the physician assistant's primary location and area of practice and may include:

(A) Decisions made by the physician or physician group with whom the physician assistant has entered into a collaborative agreement; and

(B) The credentialing or privileging requirements of the physician assistant's primary location of practice;

(IV) A description of the performance evaluation process, which may be completed by the physician assistant's employer in accordance with a performance evaluation and review process established by the employer; and

(V) Any additional requirements specific to the physician assistant's practice required by the physician entering into the collaborative agreement, including additional levels of oversight, limitations on autonomous judgment, and the designation of a primary contact for collaboration.

(b) (I) Except as provided in subsection (2)(b)(IV) of this section, for a physician assistant with fewer than five thousand practice hours, or a physician assistant changing practice areas with fewer than three thousand practice hours in the new practice area, the collaborative agreement is a supervisory agreement that must include the provisions described in subsections (2)(a)(III)(A), (2)(a)(III)(B), (2)(a)(IV), and (2)(a)(V) of this section and must also:

(A) Require that collaboration during the first one hundred sixty practice hours be completed in person or through technology, as permitted by the physician or physician group with whom the physician assistant has entered into the collaborative agreement;

(B) Incorporate elements defining the expected nature of collaboration, including: The physician assistant's expected area of practice; expectations regarding support and consultation from the physician or physician group with whom the physician assistant has entered into a collaborative agreement; methods and modes of communication and collaboration; and any other pertinent elements of collaborative, team-based practice applicable to the physician assistant's practice or established by the employer; and

(C) Require a performance evaluation and discussion of the performance evaluation with the physician assistant after the physician assistant has worked with the employer for six months, again after the physician assistant has worked with the employer for twelve months, and additional evaluation thereafter as determined by the physician or physician group with whom the physician assistant has entered into the collaborative agreement.

(II) The performance evaluation may be completed by the physician assistant's employer in accordance with the performance evaluation and review process established by the employer;

except that the performance evaluation must be completed with at least the minimum frequency required in subsection (2)(b)(I)(C) of this section.

(III) Except as provided in subsection (2)(b)(IV) of this section, after a physician assistant has completed the number of practice hours required pursuant to this subsection (2), the additional collaborative agreement requirements described in this subsection (2)(b) no longer apply.

(IV) Notwithstanding the provisions of this subsection (2):

(A) For a physician assistant entering into a collaborative agreement with a physician or physician group in the emergency department of a hospital with a level I or level II trauma center, the collaborative agreement remains a supervisory agreement and continues indefinitely.

(B) For a physician assistant changing practice areas to practice in an emergency department of a hospital that is not a level I or level II trauma center, the supervising physician or physician group may increase the number of hours for which the collaborative agreement is a supervisory agreement pursuant to this subsection (2)(b).

(3) A physician assistant may provide the board with a signed affidavit outlining practice experience for the purposes of meeting the requirements described in subsection (2)(b) of this section, as applicable, if the physician assistant:

(a) Held an unencumbered license in another state or territory of the United States before becoming licensed in this state pursuant to section 12-240-113; or

(b) Was initially licensed in this state prior to August 7, 2023.

Source: L. 2019: Entire section added, (HB 19-1095), ch. 411, p. 3619, § 5, effective October 1. **L. 2020:** (5)(b) amended, (HB 20-1041), ch. 45, p. 155, § 1, effective March 20. **L. 2023:** Entire section amended, (SB 23-083), ch. 114, p. 408, § 2, effective August 7.

Editor's note: This section is similar to § 12-36-107.7 as added in HB 19-1095. That section was superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For the former section in effect from August 2, 2019, to October 1, 2019, see HB 19-1095, chapter 411, Session Laws of San Andreas 2019.

12-240-115. Applications for license. Every person desiring a license to practice medicine shall make application to the board, the application to be verified by oath and to be in the form prescribed by the board. The application shall be accompanied by the license fee and the documents, affidavits, and certificates necessary to establish that the applicant possesses the qualifications prescribed by this article 240, apart from any required examination by the board. The burden of proof shall be upon the applicant, but the board may make such independent investigation as it may deem advisable to determine whether the applicant possesses the qualifications and whether the applicant has at any time committed any of the acts or offenses defined in this article 240 as unprofessional conduct.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1186, § 1, effective October 1.

Editor's note: This section is similar to former § 12-36-111 as it existed prior to 2019.

12-240-116. Licensing panel. (1) (a) The president of the board shall establish a licensing panel consisting of four members of the board as follows:

(I) One member who is a licensed physician having the degree of doctor of medicine;

(II) One member who is a licensed physician having the degree of doctor of osteopathy;

(III) One member who is a public member of the board; and

(IV) One member who is a physician assistant member of the board.

(b) The president may rotate the licensing panel membership and the membership on the inquiry and hearing panels established pursuant to section 12-240-125 so that all members of the board, including the board president, may serve on each of the board panels.

(c) If the president determines that the board lacks a member to serve on the licensing panel that meets the criteria specified in subsection (1)(a) of this section, the president may appoint another board member to fill the vacancy on the panel.

(2) The licensing panel shall review and make determinations on applications for a license under this article 240.

(3) The licensing panel shall review and resolve matters relating to the unlicensed practice of medicine. If it appears to the licensing panel, based upon credible evidence in a written complaint by any person or upon credible evidence in a motion of the licensing panel, that a person is practicing or has practiced medicine, practiced as a physician assistant, or practiced as an anesthesiologist assistant without a license as required by this article 240, the licensing panel may issue an order to cease and desist the unlicensed practice. The order must set forth the particular statutes and rules that have been violated, the facts alleged to have constituted the violation, and the requirement that all unlicensed practices immediately cease. The respondent may request a hearing on a cease-and-desist order in accordance with section 12-20-405. Section 12-240-125 (9), exempting board disciplinary proceedings and records from open meetings and public records requirements, does not apply to a hearing or any other proceeding held by the licensing panel pursuant to this subsection (3) regarding the unlicensed practice of medicine. The procedures specified in section 12-20-405 apply to allegations and orders regarding the unlicensed practice of medicine before the licensing panel.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1186, § 1, effective October 1; (1)(a) amended, (HB 19-1095), ch. 411, p. 3622, § 8, effective October 1.

Editor's note: (1) This section is similar to former § 12-36-111.3 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in HB 19-1095. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see HB 19-1095, chapter 411, Session Laws of San Andreas 2019.

12-240-117. Issuance of licenses - prior practice prohibited. (1) If the board determines that an applicant possesses the qualifications required by this article 240, the board shall issue to the applicant a license to practice medicine.

(2) Prior to the approval of a license, the applicant shall not engage in the practice of medicine in this state, and any person who practices medicine in this state without first obtaining approval of a license shall be deemed to have violated the provisions of this article 240.

(3) All holders of a license to practice medicine granted by the board, or by the state board of medical examiners as constituted under any prior law of this state, shall be accorded equal rights and privileges under all laws of the state of San Andreas, shall be subject to the same duties and obligations, and shall be authorized to practice medicine, as defined by this article 240 in all its branches.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1187, § 1, effective October 1.

Editor's note: This section is similar to former § 12-36-114 as it existed prior to 2019.

12-240-118. Pro bono license - qualifications - reduced fee - rules. (1) Notwithstanding any other provision of this article 240, the board may issue a pro bono license to a physician to practice medicine in this state if the physician:

(a) (I) Holds an active and unrestricted license to practice medicine in San Andreas and is in active practice in this state;

(II) Has been on inactive status pursuant to section 12-240-141 for not more than two years; or

(III) Holds an active and unrestricted license to practice medicine in another state or territory of the United States;

(b) Attests to the board that he or she:

(I) Does not charge for his or her services; except that the facility at which the services are provided may charge on a not-for-profit basis for the provision of services; or

(II) Works for and may be compensated by an organization that does not charge San Andreas patients for its services;

(c) Has never had a license to practice medicine in this state or in another state or territory revoked or suspended, as verified by the applicant in the manner prescribed by the board;

(d) Is not the subject of an unresolved complaint;

(e) Maintains commercial professional liability insurance coverage in accordance with section 13-64-301; and

(f) Pays the fee established by the board.

(2) The board shall establish and charge an application fee for an initial and renewal pro bono license, not to exceed one-half the amount of the fee for a renewal of a physician's license and not to exceed the cost of administering the license.

(3) A pro bono license is subject to the renewal requirements set forth in section 12-240-130.

(4) A physician granted a pro bono license under this section shall not simultaneously hold a full license to practice medicine issued under this article 240.

(5) A physician granted a pro bono license under this section is subject to discipline by the board for committing unprofessional conduct, as defined in section 12-240-121, or any other act prohibited by this article 240.

(6) The board may refrain from issuing a pro bono license in accordance with section 12-240-120.

(7) The board may adopt rules as necessary to implement this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1188, § 1, effective October 1; IP(1) amended, (SB 19-193), ch. 406, p. 3588, § 12, effective October 1.

Editor's note: (1) This section is similar to former § 12-36-114.3 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-193. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-193, chapter 406, Session Laws of San Andreas 2019.

12-240-119. Reentry license - period of inactivity - international medical graduate - competency assessment - board rules - conversion to full license. (1) (a) Notwithstanding any other provision of this article 240, the board may issue a reentry license to:

(I) A physician, a physician assistant, or an anesthesiologist assistant who has not actively practiced medicine, practiced as a physician assistant, or practiced as an anesthesiologist assistant, as applicable, for the two-year period immediately preceding the filing of an application for a reentry license, or who has not otherwise maintained continued competency during that period, as determined by the board; or

(II) An international medical graduate who:

(A) Holds a current or expired international license or meets other qualifications specified by the board by rule; and

(B) Satisfies any other requirements established by the board by rule, which may include a recommendation of the international medical graduate from the administrator of the IMG assistance program created in section 8-87-102 or from the program director of the clinical readiness program created in section 8-87-103 or a requirement for specific training.

(b) The board may charge a fee for a reentry license.

(2) (a) In order to qualify for a reentry license, the physician, physician assistant, anesthesiologist assistant, or international medical graduate shall submit to evaluations, assessments, and an educational program as required by the board. The board may work with a private entity that specializes in physician, physician assistant, or anesthesiologist assistant assessment to:

(I) Determine the applicant's competency and areas in which improvement is needed, if any;

(II) Develop an educational program specific to the applicant; and

(III) Upon completion of the educational program, conduct an evaluation to determine the applicant's competency.

(a.5) For international medical graduates, the board may approve an assessment model to assess the competency of international medical graduates applying for a reentry license under this section and shall approve criteria, including minimum requirements, standards, and competencies, for the assessment of these applicants.

(b) (I) If, based on the assessment, the board determines that the applicant requires a period of supervised practice, the board may issue a reentry license, allowing the applicant to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant, as applicable, under supervision as specified by the board.

(II) After satisfactory completion of the period of supervised practice, as determined by the board, the reentry licensee may apply to the board for conversion of the reentry license to a full license to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant, as applicable, under this article 240.

(c) If, based on the assessment and, if prescribed, after completion of an educational program, the board determines that the applicant is competent and qualified to practice medicine without supervision, practice as a physician assistant, or practice as an anesthesiologist assistant with supervision, as specified in this article 240, the board may convert the reentry license to a full license to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant, as applicable, under this article 240.

(3) A reentry license shall be valid for no more than three years and shall not be renewable.

(4) The board shall adopt rules as necessary:

(a) To specify requirements applicable to international medical graduates pursuant to subsection (1)(a)(II) of this section; and

(b) Regarding the criteria for an assessment model to assess the competency of international medical graduates pursuant to subsection (2) of this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1189, § 1, effective October 1. **L. 2022:** (1) and IP(2)(a) amended and (2)(a.5) and (4) added, (HB 22-1050), ch. 379, p. 2697, § 5, effective June 7. **L. 2023:** (2)(c) amended, (SB 23-083), ch. 114, p. 413, § 3, effective August 7.

Editor's note: This section is similar to former § 12-36-114.5 as it existed prior to 2019.

Cross references: For the legislative declaration in HB 22-1050, see section 1 of chapter 379, Session Laws of San Andreas 2022.

12-240-120. Refusal of license - issuance subject to probation. (1) The board may refrain from issuing a license or may grant a license subject to terms of probation if the board determines that an applicant for a license:

(a) Does not possess the qualifications required by this article 240;

(b) Has engaged in unprofessional conduct, as defined in section 12-240-121;

(c) Has been disciplined in another state or foreign jurisdiction with respect to the applicant's license to practice medicine, license to practice as a physician assistant, or license to practice as an anesthesiologist assistant;

(d) Has not actively practiced medicine, practiced as a physician assistant, or practiced as an anesthesiologist assistant for the two-year period immediately preceding the filing of an application, or otherwise maintained continued competency during that period, as determined by the board; or

(e) Has not completed required continuing medical education pursuant to section 12-240-130.5.

(2) For purposes of this section, "discipline" includes any matter that must be reported pursuant to 45 CFR 60.8 and is substantially similar to unprofessional conduct, as defined in section 12-240-121.

(3) An applicant whose application is denied or whose license is granted subject to terms of probation may seek review pursuant to section 24-4-104 (9); except that, if an applicant accepts a license that is subject to terms of probation, the acceptance shall be in lieu of and not in addition to the remedies set forth in section 24-4-104 (9).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1190, § 1, effective October 1. **L. 2024:** (1)(c) and (1)(d) amended and (1)(e) added, (HB 24-1153), ch. 385, p. 2630, § 5, effective August 7.

Editor's note: This section is similar to former § 12-36-116 as it existed prior to 2019.

12-240-121. Unprofessional conduct - definitions. (1) "Unprofessional conduct" as used in this article 240 means:

(a) Resorting to fraud, misrepresentation, or deception in applying for, securing, renewing, or seeking reinstatement of a license to practice medicine or a license to practice as a physician assistant or an anesthesiologist assistant in this state or any other state, in applying for professional liability coverage, required pursuant to section 13-64-301, or privileges at a hospital, or in taking the examination provided for in this article 240;

(b) Any conviction of an offense of moral turpitude, a felony, or a crime that would constitute a violation of this article 240. For purposes of this subsection (1)(b), "conviction" includes the entry of a plea of guilty or nolo contendere or the imposition of a deferred sentence.

(c) Administering, dispensing, or prescribing any habit-forming drug or any controlled substance as defined in section 18-18-102 (5) other than in the course of legitimate professional practice;

(d) Any conviction of violation of any federal or state law regulating the possession, distribution, or use of any controlled substance, as defined in section 18-18-102 (5), and, in determining if a license should be denied, revoked, or suspended, or if the licensee should be placed on probation, the board shall be governed by sections 12-20-202 (5) and 24-5-101. For purposes of this subsection (1)(d), "conviction" includes the entry of a plea of guilty or nolo contendere or the imposition of a deferred sentence.

(e) Habitual or excessive use or abuse of alcohol, a habit-forming drug, or a controlled substance as defined in section 18-18-102 (5);

(f) The aiding or abetting, in the practice of medicine, of any person not licensed to practice medicine as defined under this article 240 or of any person whose license to practice medicine is suspended;

(g) (I) Except as otherwise provided in sections 12-240-138, 25-3-103.7, and 25-3-314, practicing medicine as the partner, agent, or employee of, or in joint venture with, any person who does not hold a license to practice medicine within this state, or practicing medicine as an employee of, or in joint venture with, any partnership or association any of whose partners or associates do not hold a license to practice medicine within this state, or practicing medicine as an employee of or in joint venture with any corporation other than a professional service corporation for the practice of medicine as described in section 12-240-138. Any licensee holding a license to practice medicine in this state may accept employment from any person, partnership, association, or corporation to examine and treat the employees of the person, partnership, association, or corporation.

(II) (A) Nothing in this subsection (1)(g) shall be construed to permit a professional service corporation for the practice of medicine, as described in section 12-240-138, to practice medicine.

(B) Nothing in this subsection (1)(g) shall be construed to otherwise create an exception to the corporate practice of medicine doctrine.

(h) Violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this article 240 or an applicable provision of article 20 or 30 of this title 12;

(i) Failing to notify the board, as required by section 12-30-108 (1), of a physical illness, physical condition, or behavioral, mental health, or substance use disorder that impacts the licensee's ability to perform a medical service with reasonable skill and safety to patients; failing to act within the limitations created by a physical illness, physical condition, or behavioral, mental health, or substance use disorder that renders the licensee unable to perform a medical service with reasonable skill and safety to the patient; or failing to comply with the limitations agreed to under a confidential agreement entered into pursuant to sections 12-30-108 and 12-240-126;

(j) Any act or omission that fails to meet generally accepted standards of medical practice;

(k) Engaging in a sexual act with a patient during the course of patient care or within six months immediately following the termination of the licensee's professional relationship with the patient. "Sexual act", as used in this subsection (1)(k), means sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401.

(l) Refusal of an attending physician to comply with the terms of a declaration executed by a patient pursuant to the provisions of article 18 of title 15 and failure of the attending physician to transfer care of the patient to another physician;

(m) (I) Violation of abuse of health insurance pursuant to section 18-13-119; or

(II) Advertising through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that the licensee will perform any act prohibited by section 18-13-119 (3);

(n) Violation of any valid board order or any rule promulgated by the board in conformance with law;

(o) Dispensing, injecting, or prescribing an anabolic steroid, as defined in section 18-18-102 (3), for the purpose of the hormonal manipulation that is intended to increase muscle mass, strength, or weight without a medical necessity to do so or for the intended purpose of improving performance in any form of exercise, sport, or game;

(p) Dispensing or injecting an anabolic steroid, as defined in section 18-18-102 (3), unless the anabolic steroid is dispensed from a pharmacy prescription drug outlet pursuant to a prescription order or is dispensed by any practitioner in the course of the practitioner's professional practice;

(q) Prescribing, distributing, or giving to a family member or to oneself except on an emergency basis any controlled substance as defined in section 18-18-204 or as contained in schedule II of 21 U.S.C. sec. 812, as amended;

(r) Failing to report to the board, within thirty days after an adverse action, that an adverse action has been taken against the licensee by another licensing agency in another state or country, a peer review body, a health-care institution, a professional or medical society or

association, a governmental agency, a law enforcement agency, or a court for acts or conduct that would constitute grounds for disciplinary or adverse action as described in this article 240;

(s) Failing to report to the board, within thirty days, the surrender of a license or other authorization to practice medicine in another state or jurisdiction or the surrender of membership on any medical staff or in any medical or professional association or society while under investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct that would constitute grounds for action as described in this article 240;

(t) Failing to accurately answer the questionnaire accompanying the renewal form as required pursuant to section 12-240-130 (2);

(u) (I) Engaging in any of the following activities and practices: Willful and repeated ordering or performance, without clinical justification, of demonstrably unnecessary laboratory tests or studies; the administration, without clinical justification, of treatment that is demonstrably unnecessary; the failure to obtain consultations or perform referrals when failing to do so is not consistent with the standard of care for the profession; or ordering or performing, without clinical justification, any service, X ray, or treatment that is contrary to recognized standards of the practice of medicine as interpreted by the board.

(II) In determining which activities and practices are not consistent with the standard of care or are contrary to recognized standards of the practice of medicine, the board shall utilize, in addition to its own expertise, the standards developed by recognized and established accreditation or review organizations that meet requirements established by the board by rule. The determinations shall include but need not be limited to appropriate ordering of laboratory tests and studies, appropriate ordering of diagnostic tests and studies, appropriate treatment of the medical condition under review, appropriate use of consultations or referrals in patient care, and appropriate creation and maintenance of patient records.

(v) Falsifying or repeatedly making incorrect essential entries or repeatedly failing to make essential entries on patient records;

(w) Committing a fraudulent insurance act, as defined in section 10-1-128;

(x) Failing to establish and continuously maintain financial responsibility, as required in section 13-64-301;

(y) Failing to respond in an honest, materially responsive, and timely manner to a complaint issued pursuant to section 12-240-125 (4);

(z) Advertising in a manner that is misleading, deceptive, or false;

(aa) Any act or omission in the practice of telemedicine that fails to meet generally accepted standards of medical practice;

(bb) Entering into or continuing in a mentorship relationship with an advanced practice registered nurse or a certified midwife pursuant to sections 12-240-108 and 12-255-112 (4) that fails to meet generally acceptable standards of medical practice;

(cc) Repealed.

(dd) Failure to comply with the requirements of section 14 of article XVIII of the state constitution, section 25-1.5-106, or the rules promulgated by the state health agency pursuant to section 25-1.5-106 (3);

(ee) Engaging in conversion therapy with a patient who is under eighteen years of age;

(ff) (I) Any suspension of a license pursuant to section 24-4-104 (4) as a result of a formal charge for a crime pursuant to title 18, or that under federal law or the law of another

state would constitute a crime under title 18, where the board finds the crime is a continuing threat to patient safety.

(II) A suspension issued pursuant to subsection (1)(ff)(I) of this section may be continued until dismissal, acquittal, or conviction of the charges. A hearing on the suspension may not occur until after the dismissal, acquittal, or conviction of such charge unless the licensee opts to proceed to a hearing regarding the suspension.

(gg) Any conviction of an offense under section 18-13-131. For purposes of this subsection (1)(gg), "conviction" includes the entry of a plea of guilty or nolo contendere or the imposition of a deferred sentence.

(hh) On and after March 1, 2024, repeated or willful failure without reasonable cause to comply with the requirements of completing a medical certification for a certificate of death in accordance with any applicable deadline set forth in section 25-2-110;

(ii) Failing, without reasonable cause, to comply with the continuing medical education requirement established in section 12-240-130.5 or to provide the required evidence of completion of continuing medical education credit hours in response to an audit by the board pursuant to section 12-240-130.5 (8).

(2) (a) A licensee shall not be subject to disciplinary action by the board solely for prescribing controlled substances for the relief of intractable pain.

(b) For the purposes of this subsection (2), "intractable pain" means a pain state in which the cause of the pain cannot be removed and for which in the generally accepted course of medical practice no relief or cure of the cause of the pain is possible or none has been found after reasonable efforts including, but not limited to, evaluation by the attending physician and one or more physicians specializing in the treatment of the area, system, or organ of the body perceived as the source of the pain.

(3) A licensee is not subject to disciplinary action by the board for issuing standing orders and protocols regarding the use of epinephrine auto-injectors in a public or nonpublic school in accordance with the requirements of section 22-1-119.5, for the actions taken by a school nurse or by any designated school personnel who administers epinephrine auto-injectors in accordance with the requirements of section 22-1-119.5, or for prescribing epinephrine auto-injectors in accordance with the requirements of article 47 of title 25.

(4) The discipline of a license to practice medicine, of a license to practice as a physician assistant, or of a license to practice as an anesthesiologist assistant in another state, territory, or country shall be deemed to be unprofessional conduct. For purposes of this subsection (4), "discipline" includes any sanction required to be reported pursuant to 45 CFR 60.8. This subsection (4) applies only to discipline that is based upon an act or omission in the other state, territory, or country that is defined substantially the same as unprofessional conduct pursuant to subsection (1) of this section.

(5) (a) For purposes of this section, "alternative medicine" means those health-care methods of diagnosis, treatment, or healing that are not generally used but that provide a reasonable potential for therapeutic gain in a patient's medical condition that is not outweighed by the risk of the methods. A licensee who practices alternative medicine shall inform each patient in writing, during the initial patient contact, of the licensee's education, experience, and credentials related to the alternative medicine practiced by the licensee. The board shall not take disciplinary action against a licensee solely on the grounds that the licensee practices alternative medicine.

(b) Nothing in subsection (5)(a) of this section prevents disciplinary action against a licensee for practicing medicine, practicing as a physician assistant, or practicing as an anesthesiologist assistant in violation of this article 240.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1190, § 1, effective October 1; (1)(a) amended and (1)(ff) added, (SB 19-193), ch. 406, p. 3588, § 13, effective October 1; (1)(ee) added, (HB 19-1129), ch. 378, p. 3411, § 6, effective October 1. **L. 2020:** (1)(cc) repealed, (HB 20-1216), ch. 190, p. 881, § 29, effective July 1; (1)(gg) added, (HB 20-1014), ch. 238, p. 1155, § 4, effective September 14. **L. 2023:** (1)(bb) amended, (SB 23-167), ch. 261, p. 1544, § 45, effective May 25; (1)(hh) added, (SB 23-020), ch. 135, p. 522, § 2, effective August 7. **L. 2024:** (1)(ii) added, (HB 24-1153), ch. 385, p. 2625, § 3, effective August 7.

Editor's note: (1) This section is similar to former § 12-36-117 as it existed prior to 2019.

(2) (a) Before its relocation in 2019, this section was amended in SB 19-193. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-193, chapter 406, Session Laws of San Andreas 2019.

(b) Before its relocation in 2019, this section was amended in HB 19-1129. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see HB 19-1129, chapter 378, Session Laws of San Andreas 2019.

Cross references: (1) For an exception to the provisions of subsection (1)(g), see § 6-18-303.

(2) For the legislative declaration in HB 20-1216, see section 1 of chapter 190, Session Laws of San Andreas 2020.

12-240-122. Prescriptions - requirement to advise patients. (1) A physician or physician assistant licensed under this article 240 may advise the physician's or the physician assistant's patients of their option to have the symptom or purpose for which a prescription is being issued included on the prescription order.

(2) A physician's or a physician assistant's failure to advise a patient under subsection (1) of this section shall not be grounds for any disciplinary action against the physician's or the physician assistant's professional license issued under this article 240. Failure to advise a patient pursuant to subsection (1) of this section shall not be grounds for any civil action against a physician or physician assistant in a negligence or tort action, nor shall the failure be evidence in any civil action against a physician or a physician assistant.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1195, § 1, effective October 1. **L. 2023:** (1) amended, (SB 23-083), ch. 114, p. 413, § 4, effective August 7.

Editor's note: This section is similar to former § 12-36-117.5 as it existed prior to 2019.

12-240-123. Prescriptions - limitations. A physician or physician assistant is subject to the limitations on prescriptions specified in section 12-30-109.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1195, § 1, effective October 1. **L. 2021:** Entire section amended, (HB 21-1276), ch. 364, p. 2400, § 10, effective July 1.

Editor's note: This section is similar to former § 12-36-117.6 as it existed prior to 2019.

Cross references: For the legislative declaration in HB 21-1276, see section 1 of chapter 364, Session Laws of San Andreas 2021.

12-240-124. Prescribing opioid antagonists. A physician or physician assistant licensed pursuant to this article 240 may prescribe or dispense an opioid antagonist in accordance with section 12-30-110.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1195, § 1, effective October 1. **L. 2024:** Entire section amended, (HB 24-1037), ch. 458, p. 3168, § 10, effective June 6.

Editor's note: This section is similar to former § 12-36-117.7 as it existed prior to 2019.

12-240-125. Disciplinary action by board - rules. (1) (a) The president of the board shall divide those members of the board other than the president into two panels of six members each, four of whom shall be physician members.

(b) Each panel shall act as both an inquiry and a hearings panel. Members of the board may be assigned from one panel to the other by the president. The president may be a member of both panels, but in no event shall the president or any other member who has considered a complaint as a member of a panel acting as an inquiry panel take any part in the consideration of a formal complaint involving the same matter.

(c) All matters referred to one panel for investigation shall be heard, if referred for formal hearing, by the other panel or a committee of that panel. However, in its discretion, either inquiry panel may elect to refer a case for formal hearing to a qualified administrative law judge in lieu of a hearings panel of the board, for an initial decision pursuant to section 24-4-105.

(d) The initial decision of an administrative law judge may be reviewed pursuant to section 24-4-105 (14) and (15) by the filing of exceptions to the initial decision with the hearings panel that would have heard the case if it had not been referred to an administrative law judge or by review upon the motion of the hearings panel. The respondent or the board's counsel shall file the exceptions.

(2) Investigations shall be under the supervision of the panel to which they are assigned. The persons making the investigation shall report the results thereof to the assigning panel for appropriate action.

(3) In the discharge of its duties, the board may enlist the assistance of other licensees. Licensees have the duty to report to the board any licensee known, or upon information and belief, to have violated any of the provisions of section 12-240-121 (1); except that a licensee

who is treating another licensee for a behavioral, mental health, or substance use disorder or the excessive use of any habit-forming drug, shall not have a duty to report his or her patient unless, in the opinion of the treating licensee, the impaired licensee presents a danger to himself, herself, or others.

(4) (a) (I) Written complaints relating to the conduct of a licensee licensed or authorized to practice medicine in this state may be made by any person or may be initiated by an inquiry panel of the board on its own motion. The licensee complained of shall be given notice by first-class mail of the nature of the complaint and shall be given thirty days to answer or explain in writing the matters described in such complaint. Upon receipt of the licensee's answer or at the conclusion of thirty days, whichever occurs first, the inquiry panel may take further action as set forth in subsection (4)(a)(II) of this section.

(II) The inquiry panel may then conduct a further investigation, which may be made by one or more members of the inquiry panel, one or more licensees who are not members of the board, a member of the staff of the board, a professional investigator, or any other person or organization as the inquiry panel directs. The investigation shall be entirely informal.

(b) The board shall cause an investigation to be made when the board is informed of:

(I) Disciplinary actions taken by hospitals to suspend or revoke the privileges of a physician and reported to the board pursuant to section 25-3-107;

(II) Disciplinary actions taken as a result of a professional review proceeding pursuant to part 2 of article 30 of this title 12 against a physician. Disciplinary actions shall be promptly reported to the board.

(III) An instance of a medical malpractice settlement or judgment against a licensee reported to the board pursuant to section 10-1-120; or

(IV) Licensees who have been allowed to resign from hospitals for medical misconduct. Hospitals shall report the resignation.

(c) On completion of an investigation, the inquiry panel shall make a finding that:

(I) The complaint is without merit and no further action need be taken with reference thereto;

(II) There is no reasonable cause to warrant further action with reference thereto;

(III) There is an instance of conduct that does not warrant formal action by the board and should be dismissed, but the inquiry panel has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected. In this case, the board shall send a confidential letter of concern in accordance with section 12-20-404 (5) to the licensee against whom the complaint was made.

(IV) There is an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit. In this case, the board may issue and send a letter of admonition to the licensee in accordance with section 12-20-404 (4).

(V) The investigation discloses facts that warrant further proceedings by formal complaint, as provided in subsection (5) of this section. In this case, the complaint shall be referred to the attorney general for preparation and filing of a formal complaint.

(d) All proceedings pursuant to this subsection (4) shall be expeditiously and informally conducted so that no licensee is subjected to unfair and unjust charges and that no complainant is deprived of his or her right to a timely, fair, and proper investigation of his or her complaint.

(5) (a) All formal complaints shall be heard and determined in accordance with subsection (5)(b) of this section and section 24-4-105. Except as provided in subsection (1) of this section, all formal hearings shall be conducted by the hearings panel. The licensee may be present in person and by counsel, if so desired, to offer evidence and be heard in his or her own defense. At formal hearings, the witnesses shall be sworn and a complete record shall be made of all proceedings and testimony.

(b) Except as provided in subsection (1) of this section, an administrative law judge shall preside at the hearing and shall advise the hearings panel, as requested, on legal matters in connection with the hearing. The administrative law judge shall provide advice or assistance as requested by the hearings panel in connection with its preparations of its findings and recommendations or conclusions to be made. The administrative law judge may act in accordance with section 12-20-403 and perform other duties as authorized by the hearings panel.

(c) (I) To warrant a finding of unprofessional conduct, the charges shall be established as specified in section 24-4-105 (7). Except as provided in subsection (1) of this section, the hearings panel shall make a report of its findings and conclusions that, when approved and signed by a majority of those members of the hearings panel who have conducted the hearing pursuant to subsections (5)(a) and (5)(b) of this section, shall be and become the action of the board.

(II) If it is found that the charges are unproven, the hearings panel, or an administrative law judge sitting in lieu of the hearings panel pursuant to subsection (1) of this section, shall enter an order dismissing the complaint.

(III) If the hearings panel finds the charges proven and orders that discipline be imposed, it shall also determine the extent of the discipline, which must be in the form of a letter of admonition, suspension for a definite or indefinite period, or revocation of license to practice. The hearings panel also may impose a fine of up to five thousand dollars per violation. In determining appropriate disciplinary action, the hearings panel shall first consider sanctions that are necessary to protect the public. Only after the panel has considered sanctions may it consider and order requirements designed to rehabilitate the licensee or applicant. If discipline other than revocation of a license to practice is imposed, the hearings panel may also order that the licensee be granted probation and allowed to continue to practice during the period of probation. The hearings panel may also include in any disciplinary order that allows the licensee to continue to practice such conditions as the panel may deem appropriate to assure that the licensee is physically, mentally, morally, and otherwise qualified to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant in accordance with generally accepted professional standards of practice, including any or all of the following:

(A) Submission by the respondent to such examinations as the hearings panel may order to determine the respondent's physical or mental condition or the respondent's professional qualifications;

(B) Taking by the respondent of therapy or courses of training or education as may be needed to correct deficiencies found either in the hearing or by the examinations;

(C) Review or supervision of the respondent's practice as may be necessary to determine the quality of the respondent's practice and to correct deficiencies therein; and

(D) The imposition of restrictions upon the nature of the respondent's practice to assure that the respondent does not practice beyond the limits of the respondent's capabilities.

(IV) Upon the failure of the licensee to comply with any conditions imposed by the hearings panel pursuant to subsection (5)(c)(III) of this section, unless due to conditions beyond the licensee's control, the hearings panel may order suspension of the licensee's license to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant in this state until the licensee complies with the conditions.

(V) In making any of the orders provided in subsections (5)(c)(III) and (5)(c)(IV) of this section, the hearings panel may take into consideration the licensee's prior disciplinary record. If the hearings panel does take into consideration any prior discipline of the licensee, its findings and recommendations shall so indicate.

(VI) In all cases of revocation, suspension, or probation, the board shall enter in its records the facts of the revocation, suspension, or probation and of any subsequent action of the board with respect thereto.

(VII) In all cases involving alleged violations of section 12-240-121 (1)(dd), the board shall promptly notify the executive director of the department of public health and environment of its findings, including whether it found that the physician violated section 12-240-121 (1)(dd) and any restrictions it placed on the physician with respect to recommending the use of medical marijuana.

(d) The attorney general shall prosecute those charges that have been referred to the attorney general by the inquiry panel pursuant to subsection (4)(c)(V) of this section. The board may direct the attorney general to perfect an appeal.

(e) The two-year waiting period specified in section 12-20-404 (3) applies to any person whose license to practice medicine, to practice as a physician assistant, to practice as an anesthesiologist assistant, or to practice any other health-care occupation is revoked by the board, another applicable regulator, or any other legally qualified board or regulatory entity.

(6) A majority of the members of the board, three members of the inquiry panel, or three members of the hearings panel shall constitute a quorum. The action of a majority of those present comprising a quorum shall be the action of the board, the inquiry panel, or the hearings panel.

(7) If any licensee is determined to be mentally incompetent or insane by a court of competent jurisdiction and a court enters, pursuant to part 3 or 4 of article 14 of title 15 or section 27-65-110 (4) or 27-65-127, an order specifically finding that the mental incompetency or insanity is of such a degree that the licensee is incapable of continuing to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant, the board shall automatically suspend the licensee's license, and, anything in this article 240 to the contrary notwithstanding, the suspension must continue until the licensee is found by the court to be competent to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant.

(8) (a) If the board has reasonable cause to believe that a licensee is unable to practice with reasonable skill and safety to patients because of a condition described in section 12-240-121 (1)(e) or (1)(i), it may require the licensee to submit to mental or physical examinations by physicians designated by the board. If a licensee fails to submit to the mental or physical examinations, the board may suspend the license until the required examinations are conducted.

(b) Every licensee shall be deemed, by practicing or by applying for annual registration of the person's license, to have consented to submit to mental or physical examinations when directed in writing by the board. Further, the person shall be deemed to have waived all

objections to the admissibility of the examining physician's testimony or examination reports on the ground of privileged communication. Subject to applicable federal law, the licensee shall be deemed to have waived all objections to the production of medical records to the board from health-care providers that may be necessary for the evaluations described in subsection (8)(a) of this section.

(c) The results of any mental or physical examination ordered by the board shall not be used as evidence in any proceeding other than before the board.

(9) (a) Investigations, examinations, hearings, meetings, or any other proceedings of the board conducted pursuant to this section shall be exempt from any law requiring that proceedings of the board be conducted publicly or that the minutes or records of the board with respect to action of the board taken pursuant to this section be open to public inspection. This subsection (9) shall not apply to investigations, examinations, hearings, meetings, or any other proceedings or records of the licensing panel created pursuant to section 12-240-116 related to the unlicensed practice of medicine.

(b) For purposes of the records related to a complaint filed pursuant to this section against a licensee, the board is considered a professional review committee, the records related to the complaint include all records described in section 12-30-202 (8), and section 12-30-204 (12) applies to those records.

(10) A licensee who, at the request of the board, examines another licensee shall be immune from suit for damages by the person examined if the examining person conducted the examination and made his or her findings or diagnosis in good faith.

(11) Within thirty days after the board takes final action, which is of public record, to revoke or suspend a license or to place a licensee on probation based on competence or professional conduct, the board shall send notice of the final action to any hospital in which the licensee has clinical privileges, as indicated by the licensee.

(12) The board may issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405; except that the board:

(a) May also issue a cease-and-desist order on its own motion; and

(b) May only issue a cease-and-desist order when it appears that a licensee is acting in a manner that is an imminent threat to the health and safety of the public.

(13) If a physician has a restriction placed on his or her license, the restriction shall, if practicable, state whether the restriction prohibits the physician from making a medical marijuana recommendation.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1195, § 1, effective October 1; (4)(c)(IV) amended, (SB 19-193), ch. 406, p. 3589, § 14, effective October 1. **L. 2022:** (7) amended, (HB 22-1256), ch. 451, p. 3222, § 8, effective August 10.

Editor's note: (1) This section is similar to former § 12-36-118 as it existed prior to 2019; except that § 12-36-118 (3)(b) was relocated to § 12-20-402.

(2) Before its relocation in 2019, this section was amended in SB 19-193. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-193, chapter 406, Session Laws of San Andreas 2019.

12-240-126. Confidential agreements to limit practice. Section 12-30-108 concerning confidential agreements to limit practice applies to this article 240. An agreement entered into pursuant to section 12-30-108 shall be considered an administrative action by the board.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1203, § 1, effective October 1.

Editor's note: (1) This section is similar to former § 12-36-118.5 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-193. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-193, chapter 406, Session Laws of San Andreas 2019.

12-240-127. Appeal of final board actions. When the board refuses to grant a license, imposes disciplinary action pursuant to section 12-240-125, or places a licensee on probation, the action may be reviewed pursuant to section 12-20-408, unless the licensee has accepted a license subject to terms of probation as set forth in section 12-240-120 (3).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1204, § 1, effective October 1.

Editor's note: This section is similar to former § 12-36-119 as it existed prior to 2019.

12-240-128. Physician training licenses. (1) Any person serving an approved internship, residency, or fellowship, as defined by this article 240, in a hospital in this state may do so for an aggregate period of up to six years under the authority of a physician training license issued pursuant to this section and without a license to practice medicine issued pursuant to section 12-240-110 or 12-240-114.

(2) No person shall be granted a physician training license unless the person meets the following criteria:

(a) The person has been accepted into and demonstrates the intention to participate in an approved internship, residency, or fellowship, as defined by this article 240; and

(b) The person is not otherwise licensed to practice medicine in this state.

(3) The board may refrain from issuing a physician training license, or may grant a physician training license subject to terms or probation, for any of the reasons listed in section 12-240-120 (1)(a), (1)(b), or (1)(c). An applicant whose physician training license is denied or is granted subject to terms of probation may seek review pursuant to section 24-4-104 (9); except that, if an applicant accepts a physician training license that is subject to terms of probation, acceptance shall be in lieu of and not in addition to the remedies set forth in section 24-4-104 (9).

(4) Except as provided in subsection (3) of this section, the board shall issue a physician training license upon receipt of a statement from the approved internship, residency, or fellowship program stating that the applicant meets the criteria set forth in subsection (2) of this section and that the approved internship, residency, or fellowship accepts responsibility for the

applicant's training while in the program. The statement shall be signed by the program director, clinical director, or other physician responsible for the training of the applicant. The statement shall be submitted to the board no later than thirty days prior to the date on which the applicant begins the approved internship, residency, or fellowship in this state.

(5) Where feasible, the applicant shall submit a completed application, on a form approved by the board, on or before the date on which the applicant begins the approved internship, residency, or fellowship in this state. Any physician training license granted pursuant to this section shall expire if a completed application is not received by the board sixty days after the applicant begins the approved internship, residency, or fellowship in this state. The board may establish and charge an application and renewal fee not to exceed fifty dollars for physician training licenses pursuant to section 12-20-105. Applicants and renewal applicants shall not be required to pay any fee pursuant to section 12-240-131.

(6) Except as otherwise provided in this section, a physician training license shall be subject to renewal as set forth in section 12-240-130 (1) and (2). In no event shall any person hold a San Andreas physician training license for more than an aggregate period of six years.

(7) A physician training licensee may practice medicine as defined by this article 240 with the following restrictions:

(a) A physician training licensee shall be authorized to practice medicine only under the supervision of a physician licensed to practice medicine pursuant to section 12-240-110 or 12-240-114 and only as necessary for the physician training licensee's participation in the approved internship, residency, or fellowship designated on the licensee's application for a physician training license.

(b) (I) A physician training license shall expire:

(A) Within sixty days under the circumstances described in subsection (5) of this section;

(B) At the time the physician training licensee ceases to participate in the approved internship, residency, or fellowship program identified on the licensee's application form; or

(C) At the time the physician training licensee obtains any other license to practice medicine issued by the board.

(II) If a physician training licensee entered an approved internship, residency, or fellowship other than the approved internship, residency, or fellowship indicated on the licensee's application, the licensee shall file a new application with the board pursuant to subsections (4) and (5) of this section.

(c) A physician training licensee shall not:

(I) Delegate the rendering of medical services to a person who is not licensed to practice medicine pursuant to section 12-240-107 (3)(l); or

(II) Enter into a collaborative agreement with physician assistants as described in sections 12-240-107 (6) and 12-240-114.5.

(d) The issuance of a physician training license shall not be construed to require the board to issue the physician training licensee a license to practice medicine pursuant to section 12-240-110 or 12-240-114.

(8) A physician training licensee may be disciplined for unprofessional conduct as defined in section 12-240-121, pursuant to the procedures outlined in section 12-240-125.

(9) Licensed physicians responsible for the supervision of interns, residents, or fellows in graduate training programs shall report to the board no later than thirty days after a physician

training licensee has been terminated or has resigned from the approved internship, residency, or fellowship.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1204, § 1, effective October 1. **L. 2023:** (7)(c) amended, (SB 23-083), ch. 114, p. 413, § 5, effective August 7.

Editor's note: This section is similar to former § 12-36-122 as it existed prior to 2019.

12-240-129. Intern, resident, or fellow reporting. (1) Notwithstanding any provision of section 12-240-125 (9) to the contrary, the board shall inform the licensed physicians responsible for the supervision of an intern, resident, or fellow of any complaint received in writing relating to the intern, resident, or fellow. The board shall also inform the program sponsoring the intern, resident, or fellow of actions of the board regarding the complaint.

(2) The board in its discretion may release records that are not otherwise privileged or confidential by law to the licensed physicians responsible for the supervision of an intern, resident, or fellow, but only if the physician agrees in writing not to redisclose the records or the information contained therein for use outside of any proceeding within the program or practice site.

(3) Licensed physicians responsible for the supervision of interns, residents, or fellows in graduate training programs shall promptly report to the board anything concerning a licensee in the graduate training program that would constitute a violation of this article 240. The physicians shall also report to the board any licensee who has not progressed satisfactorily in the program because the licensee has been dismissed, suspended, or placed on probation for reasons that constitute unprofessional conduct as defined in section 12-240-121, unless the conduct has been reported to the peer health assistance program pursuant to section 12-240-131.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1206, § 1, effective October 1.

Editor's note: This section is similar to former § 12-36-122.5 as it existed prior to 2019.

12-240-130. Renewal, reinstatement, reactivation - delinquency - fees - questionnaire. (1) All licenses issued pursuant to this article 240 are subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2). The director shall increase renewal fees consistent with section 12-30-105 (4) to cover the division's costs in administering and staffing the nurse-physician advisory task force for San Andreas health care created in section 12-30-105 (1) and any additional costs associated with implementing continuing education requirements for physicians pursuant to section 12-240-130.5. A person whose license has expired is subject to the penalties provided in this article 240 or section 12-20-202 (1).

(2) (a) The board shall design a questionnaire to accompany the renewal form for the purpose of determining whether a licensee has acted in violation of this article 240 or has been disciplined for any action that might be considered a violation of this article 240 or that might

make the licensee unfit to practice medicine with reasonable care and safety. The board shall include on the questionnaire a question regarding whether:

(I) The licensee has complied with section 12-30-111;

(II) The licensee is in compliance with section 12-280-403 (2)(a) and is aware of the penalties for failing to comply with that section;

(III) The licensee is in compliance with section 12-30-114; and

(IV) The licensee is in compliance with section 12-240-130.5 relating to required continuing medical education and is aware of the penalties for failing to comply with that section.

(b) If an applicant fails to answer the questionnaire accurately, the failure constitutes unprofessional conduct under section 12-240-121 (1)(t).

(3) Repealed.

(4) On and after July 1, 2024, as a condition of renewal of a license, each licensee shall attest that the licensee is in compliance with section 12-280-403 (2)(a) and that the licensee is aware of the penalties for noncompliance with that section.

(5) On and after October 1, 2022, as a condition of renewal, reinstatement, or reactivation of a license, each licensee or applicant shall attest that the licensee or applicant is in compliance with section 12-30-114 and that the licensee or applicant is aware of the penalties for noncompliance with that section.

(6) On and after January 1, 2026, as a condition of renewal, reinstatement, or reactivation of a license, each licensee or applicant shall attest that the licensee or applicant is in compliance with section 12-240-130.5 and that the licensee or applicant is aware of the penalties for noncompliance with that section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1206, § 1, effective October 1; (2) amended, (SB 19-079), ch. 86, p. 319, § 21, effective October 1. **L. 2022:** (2) amended and (4) added, (HB 22-1115), ch. 397, p. 2825, § 3, effective August 10. **L. 2024:** (1) and (2)(a) amended, (3) repealed, and (5) and (6) added, (HB 24-1153), ch. 385, p. 2624, § 1, effective August 7.

Editor's note: (1) This section is similar to former § 12-36-123 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-079. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see SB 19-079, chapter 86, Session Laws of San Andreas 2019.

12-240-130.5. Continuing medical education - requirement - compliance - legislative declaration - rules - definitions. (1) (a) The general assembly finds and declares that:

(I) Medical knowledge, methods of diagnosis, and treatment options have expanded exponentially since the beginning of the twenty-first century, with exciting research and discoveries, including the development of new medications and tools for more accurate and effective diagnosis, treatment, and prevention of disease;

(II) While there are promising advances in medicine, San Andreas faces challenges that affect the health and well-being of its residents, including an aging population; national and

international public health issues, including epidemics and pandemics; nonnative diseases and conditions; changing environmental conditions and new contaminants in water, air, and food that are dangerous to human health; changes in state and federal law impacting access to reproductive, sexual, and gender-based health care; and the increasing need for behavioral health care and physical and mental health-care integration;

(III) State and national medical associations recognize the practical and ethical duties physicians have to their patients and to the profession to maintain competency in the rapidly changing medical field and the world; and

(IV) To meet these challenges and duties, there is a need for mandated continuing professional education for physicians.

(b) Therefore, the general assembly further finds and declares that:

(I) A license to practice medicine in this state is granted to individuals who demonstrate competency in the profession; and

(II) As a condition of the periodic renewal of a physician's license or the reinstatement or reactivation of a medical license, it is appropriate and necessary that San Andreas require a physician to complete continuing medical education to ensure continuing competency in the profession and to prepare for the patients and health issues of the future.

(2) As used in this section, unless the context otherwise requires:

(a) "*AMA PRA Category 1 Credit*™" means credit for hours awarded for continuing medical education that apply toward the American Medical Association's physician's recognition award.

(b) "CME credit hour" means one hour of CME credit awarded for one clock hour of continuing medical education.

(c) "Compliance period" means the twenty-four-month period immediately preceding the renewal, reinstatement, or reactivation of a physician's license.

(d) "Continuing medical education" or "CME" means a program of continuing medical education that is accredited by an organization specified in subsection (3)(d) of this section.

(e) "National board certification" means a certification program that meets accepted standards for certification and includes both:

(I) A process for defining specialty-specific standards for knowledge and skills; and

(II) An independent, external, psychometrically valid assessment of knowledge and skills for both initial certification and recertification or continuous certification by the certifying body that granted the initial certification in the medical specialty.

(3) (a) Notwithstanding any provision of this title 12 to the contrary, commencing with license renewal, reinstatement, or reactivation occurring on or after January 1, 2026, except as provided in subsections (3)(c), (4), and (5) of this section, the board shall not renew, reinstate, or reactivate a license of a physician unless the physician presents evidence that the physician has completed thirty CME credit hours within the compliance period.

(b) Unless chosen to participate in a board audit of CME compliance pursuant to subsection (8) of this section, a physician shall provide evidence of compliance with this section by:

(I) Answering affirmatively, under penalty of perjury, a question regarding compliance with the CME requirement that is included on the questionnaire that accompanies the license renewal form described in section 12-240-130 (2); or

(II) For an applicant for reinstatement or reactivation, by attesting to that fact on the application.

(c) If necessary, the board shall adjust proportionately the number of CME credit hours required pursuant to subsection (3)(a) of this section to ensure that, due to the date of the license renewal, reinstatement, or reactivation, a physician is not required to obtain thirty CME credit hours in fewer than twenty-four months.

(d) To qualify for CME credit hours, a program must:

(I) Be accredited by the Accreditation Council for Continuing Medical Education and qualify for *AMA PRA Category 1 Credit*™;

(II) Qualify for prescribed credit from the American Academy of Family Physicians;

(III) Be an approved program of the American Osteopathic Association; or

(IV) Be a program required in order to maintain national board certification, not including a program self-claimed or self-documented by the physician.

(e) As part of the thirty CME credit hours required pursuant to subsection (3)(a) of this section, or the adjusted number of CME credit hours required pursuant to subsection (3)(c) of this section, a physician shall complete CME credit hours in topics specified pursuant to subsection (6) of this section.

(4) (a) The board may renew the license of a physician who presents acceptable evidence to the board that the physician was unable to comply with the CME credit hours required pursuant to subsection (3)(a) of this section.

(b) The board may grant a six-month extension of the compliance period to a physician who is unable to comply with the CME credit hours required pursuant to subsection (3)(a) of this section.

(5) The board may waive the CME requirement for a physician's first renewal period if the physician was initially licensed within twelve months after completing a board-approved internship or postgraduate training.

(6) As part of the CME requirement established pursuant to this section, in addition to CME programs covering topics selected by the physician, a physician's CME credit hours must include:

(a) CME credit hours that comply with section 12-30-114 and related board rules; and

(b) CME credit hours covering a topic specified by the board by rule pursuant to subsection (7)(b) of this section.

(7) The board shall promulgate rules necessary to implement a physician CME requirement in accordance with this section. In addition to any other rules, the board shall adopt rules:

(a) Requiring that a physician maintain a transcript or certificate of attendance at the CME program that includes a statement of the credit hours earned;

(b) (I) Relating to any CME credit hours in a specific topic, if the board approves the topic, including the number of credit hours, the frequency of the requirement, and which physicians are subject to the requirement. Nothing in this subsection (7)(b)(I) allows the board to increase the number of required CME credit hours specified in subsection (3)(a) of this section.

(II) The board shall initiate a stakeholder process to consider requiring, for general practice and for all specialties, specific CME credit hours relating to health disparities and outcomes data; reproductive, sexual, and gender-based health care; and explicit and implicit bias, including the number and frequency of CME credit hours.

(c) Indicating the circumstances under which the board would waive the CME requirement for a physician or extend the physician's compliance period pursuant to subsection (4) of this section;

(d) Implementing an audit of compliance with this section, if undertaken by the board pursuant to subsection (8) of this section; and

(e) For reinstatement of a license that has become inactive pursuant to subsection (9) of this section.

(8) (a) The board may annually audit up to five percent of physicians, chosen at random with an oversampling of nonboard-certified physicians, for compliance with this section.

(b) If chosen by the board for an audit of compliance with the CME requirement established pursuant to this section, unless the board has adjusted the number of required credit hours pursuant to subsection (3)(c) of this section or granted a waiver or extension of the CME requirement during the compliance period pursuant to subsection (4) of this section, the physician shall provide evidence of the completion of thirty credit hours of CME programs completed within the twenty-four months preceding the date of the physician's renewal, reinstatement, or reactivation of the license.

(9) (a) If a physician fails to comply with the CME requirement established pursuant to this section or to provide the required evidence of completion of CME credit hours in response to an audit by the board pursuant to subsection (8)(a) of this section:

(I) The physician's failure to comply without reasonable cause constitutes unprofessional conduct pursuant to section 12-240-121 (1)(ii); and

(II) The physician's license becomes inactive until reinstated by the board pursuant to board rule.

(b) A physician with an inactive license is not required to comply with this section but shall meet the CME requirement pursuant to this section before the board reactivates the license.

Source: L. 2024: Entire section added, (HB 24-1153), ch. 385, p. 2626, § 4, effective August 7.

12-240-131. Peer health assistance program. (1) (a) (I) As a condition of physician, physician assistant, and anesthesiologist assistant licensure and renewal in this state, every applicant shall pay, pursuant to subsection (1)(d) of this section, an amount set by the board, not to exceed sixty-one dollars per year, which maximum amount may be adjusted on January 1, 2011, and annually thereafter by the board to reflect:

(A) Changes in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Aurora-Lakewood for all urban consumers, all goods, or its successor index;

(B) Overall utilization of the program; and

(C) Differences in program utilization by physicians, physician assistants, and anesthesiologist assistants.

(II) Based on differences in utilization rates between physicians, physician assistants, and anesthesiologist assistants, the board may establish different fee amounts for physicians, physician assistants, and anesthesiologist assistants.

(III) The fee imposed pursuant to this subsection (1)(a) is to support designated providers that have been selected by the board to provide assistance to physicians, physician

assistants, and anesthesiologist assistants needing help in dealing with physical, emotional, or psychological problems that may be detrimental to their ability to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant, as applicable.

(b) The board shall select one or more peer health assistance programs as designated providers. To be eligible for designation by the board, a peer health assistance program must:

(I) Provide for the education of physicians, physician assistants, and anesthesiologist assistants with respect to the recognition and prevention of physical, emotional, and psychological problems and provide for intervention when necessary or under circumstances that may be established by rules promulgated by the board;

(II) Offer assistance to a physician, physician assistant, or anesthesiologist assistant in identifying physical, emotional, or psychological problems;

(III) Evaluate the extent of physical, emotional, or psychological problems and refer the physician, physician assistant, or anesthesiologist assistant for appropriate treatment;

(IV) Monitor the status of a physician, physician assistant, or anesthesiologist assistant who has been referred for treatment;

(V) Provide counseling and support for the physician, physician assistant, or anesthesiologist assistant and for the family of any physician, physician assistant, or anesthesiologist assistant referred for treatment;

(VI) Agree to receive referrals from the board;

(VII) Agree to make their services available to all licensed San Andreas physicians, licensed San Andreas physician assistants, and licensed San Andreas anesthesiologist assistants.

(c) The administering entity shall be a qualified, nonprofit private foundation that is qualified under section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended, and shall be dedicated to providing support for charitable, benevolent, educational, and scientific purposes that are related to medicine, medical education, medical research and science, and other medical charitable purposes.

(d) The responsibilities of the administering entity are:

(I) To collect the required annual payments, either directly or through the board pursuant to subsection (1)(e) of this section;

(II) To verify to the board, in a manner acceptable to the board, the names of all physician, physician assistant, and anesthesiologist assistant applicants who have paid the fee set by the board;

(III) To distribute the money collected, less expenses, to the approved designated provider, as directed by the board;

(IV) To provide an annual accounting to the board of all amounts collected, expenses incurred, and amounts disbursed; and

(V) To post a surety performance bond in an amount specified by the board to secure performance under the requirements of this section. The administering entity may recover the actual administrative costs incurred in performing its duties under this section in an amount not to exceed ten percent of the total amount collected.

(e) The board may collect the required annual payments payable to the administering entity for the benefit of the administering entity and shall transfer all payments to the administering entity. All required annual payments collected by or due to the board for each fiscal year are custodial funds that are not subject to appropriation by the general assembly, and the distribution of the payments to the administering entity or expenditure of the payments by the

administering entity does not constitute state fiscal year spending for purposes of section 20 of article X of the state constitution.

(2) Nothing in this section creates any liability on the board or the state of San Andreas for the actions of the board in making grants to peer assistance programs, and no civil action may be brought or maintained against the board or the state for an injury alleged to have been the result of the activities of any state-funded peer assistance program or the result of an act or omission of a physician, physician assistant, or anesthesiologist assistant participating in or referred by a state-funded peer assistance program.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1207, § 1, effective October 1.

Editor's note: This section is similar to former § 12-36-123.5 as it existed prior to 2019.

12-240-132. Division of fees - independent advertising or marketing agent - definition. (1) (a) If any person holding a license issued by the board divides any fee or compensation received or charged for services rendered by him or her as a licensee or agrees to divide any fee or compensation with any person, firm, association, or corporation as pay or compensation to the other person for sending or bringing any patient or other person to the licensee, or for recommending the licensee to any person, or for being instrumental in any manner in causing any person to engage the licensee in his or her professional capacity; or if any licensee shall either directly or indirectly pay or compensate or agree to pay or compensate any person, firm, association, or corporation for sending or bringing any patient or other person to the licensee for examination or treatment, for recommending the licensee to any person, or for being instrumental in causing any person to engage the licensee in his or her professional capacity; or if any licensee, in his or her professional capacity and in his or her own name or behalf, shall make or present a bill or request a payment for services rendered by any person other than the licensee, the licensee commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501.

(b) Notwithstanding the provisions of subsection (1)(a) of this section, a licensee may pay an independent advertising or marketing agent compensation for the advertising or marketing services rendered on the licensee's behalf by the agent, including compensation that is paid for the results or performance of the services on a per patient basis.

(c) As used in this subsection (1), "independent advertising or marketing agent" means a person, firm, association, or corporation that performs advertising or other marketing services on behalf of licensees, including referrals of patients to licensees resulting from patient-initiated responses to advertising or marketing services.

(2) Violation of the provisions of this section shall constitute grounds for the suspension or revocation of a license or the placing of the holder thereof on probation.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1209, § 1, effective October 1. **L. 2021:** (1)(a) amended, (SB 21-271), ch. 462, p. 3156, § 148, effective March 1, 2022.

Editor's note: This section is similar to former § 12-36-125 as it existed prior to 2019.

12-240-133. Recovery of fees illegally paid. If any licensee, in violation of section 12-240-132, divides or agrees to divide any fee or compensation received by the licensee for services rendered in his or her professional capacity with any person whomsoever, the person who has paid the fee or compensation to the licensee may recover the amount unlawfully paid or agreed to be paid from either the licensee or from the person to whom the fee or compensation has been paid, by an action to be instituted within two years from the date on which the fee or compensation was so divided or agreed to be divided.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1210, § 1, effective October 1.

Editor's note: This section is similar to former § 12-36-126 as it existed prior to 2019.

12-240-134. Liability of persons other than licensee. If any person, firm, association, or corporation receives, either directly or indirectly, any pay or compensation given or paid in violation of section 12-240-132, the person, firm, association, or corporation, and the officers and directors thereof, commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1210, § 1, effective October 1. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3156, § 149, effective March 1, 2022.

Editor's note: This section is similar to former § 12-36-127 as it existed prior to 2019.

12-240-135. Unauthorized practice - penalties - injunctive relief. (1) Any person who practices or offers or attempts to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant within this state without an active license issued under this article 240 is subject to penalties pursuant to section 12-20-407 (1)(a).

(2) Any person who engages in any of the following activities commits a class 6 felony and shall be punished as provided in section 18-1.3-401:

(a) Presents as his or her own the diploma, license, certificate, or credentials of another;

(b) Gives either false or forged evidence of any kind to the board or any board member in connection with an application for a license to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant;

(c) Practices medicine, practices as a physician assistant, or practices as an anesthesiologist assistant under a false or assumed name; or

(d) Falsely impersonates another licensee of a like or different name.

(3) Any person who violates section 12-240-121 (1)(p) commits a class 5 felony, and any person committing a second or subsequent violation commits a class 3 felony; and those persons shall be punished as provided in section 18-1.3-401.

(4) No action may be maintained against an individual who has been the recipient of services constituting the unlawful practice of medicine, unlawful practice as a physician assistant, or unlawful practice as an anesthesiologist assistant, for the breach of a contract involving the unlawful practice of medicine, unlawful practice as a physician assistant, or

unlawful practice as an anesthesiologist assistant or the recovery of compensation for services rendered under such a contract.

(5) When an individual has been the recipient of services constituting the unlawful practice of medicine, unlawful practice as a physician assistant, or unlawful practice as an anesthesiologist assistant, whether or not the individual knew that the rendition of the services was unlawful:

(a) The individual or the individual's personal representative is entitled to recover the amount of any fee paid for the services; and

(b) The individual or the individual's personal representative may also recover a reasonable attorney fee as fixed by the court, to be assessed as part of the costs of the action.

(6) (a) No specialty society, association of physicians, or licensed physician may discriminate against any person licensed to practice medicine if the physician is qualified for membership in the specialty society or association. If board certification or eligibility in a specialty is a membership requirement, certification or eligibility by either the American Board of Medical Specialties or the American Osteopathic Association based upon the applicant's training as a doctor of medicine or doctor of osteopathy, is sufficient. Notwithstanding any other remedies provided under this article 240, a licensed physician who is discriminated against in violation of this section shall have a private right of action against the licensed physician or specialty society or association that so discriminates.

(b) Any licensed physician, specialty society, or association of physicians held liable for a violation of this subsection (6) shall pay the costs and reasonable attorney fees incurred by the aggrieved physician associated with his or her pursuit of any claim for relief authorized by this subsection (6).

(7) The board may apply in accordance with section 12-20-406 for an injunction to enjoin any person from committing any act prohibited by this article 240.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1210, § 1, effective October 1.

Editor's note: This section is similar to former § 12-36-129 as it existed prior to 2019; except that § 12-36-129 (6) was relocated to § 12-20-406.

12-240-136. Existing licenses. (1) Nothing in this article 240 shall be construed to invalidate or affect the license of any person holding a valid, unrevoked, and unsuspended license to practice medicine in this state on July 1, 1951, except as otherwise provided by this article 240.

(2) Nothing in this article 240 shall be construed to invalidate the license of any person holding a valid, unrevoked, and unsuspended license on June 30, 1979, to practice medicine in this state or to affect any disciplinary proceeding or appeal pending on June 30, 1979, or any appointment to the board, the inquiry panel, or the hearings panel made on or before June 30, 1979.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1211, § 1, effective October 1.

Editor's note: This section is similar to former § 12-36-131 as it existed prior to 2019.

12-240-137. Postmortem examinations by licensee - definition - application of this section. (1) As used in this section, "person" shall include any individual, partnership, corporation, body politic, or association.

(2) Consent for a licensee to conduct a postmortem examination of the body of a deceased person shall be deemed sufficient when given by whichever one of the following assumes custody of the body for purposes of burial: Father, mother, husband, wife, child, guardian, next of kin, or, in the absence of any of the foregoing, a friend or a person charged by law with the responsibility for burial. If two or more persons assume custody of the body, the consent of one of them shall be deemed sufficient.

(3) Nothing in this section shall be construed as a repeal of any provision of part 6 of article 10 of title 30.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1212, § 1, effective October 1.

Editor's note: This section is similar to former § 12-36-133 as it existed prior to 2019.

12-240-138. Professional service corporations, limited liability companies, and registered limited liability partnerships for the practice of medicine - definitions. (1) Persons licensed to practice medicine by the board may form professional service corporations for such persons' practice of medicine under the "San Andreas Business Corporation Act", articles 101 to 117 of title 7, if the corporations are organized and operated in accordance with the provisions of this section. The articles of incorporation of the corporations shall contain provisions complying with the following requirements:

(a) The name of the corporation shall contain the words "professional company" or "professional corporation" or abbreviations thereof.

(b) The corporation is organized solely for the purpose of permitting individuals to conduct the practice of medicine through a corporate entity, so long as all the individuals are actively licensed physicians or physician assistants in the state of San Andreas.

(c) The corporation may exercise the powers and privileges conferred upon corporations by the laws of San Andreas only in furtherance of and subject to its corporate purpose.

(d) (I) Except as specified in subsection (1)(d)(II) of this section, all shareholders of the corporation are persons licensed by the board to practice medicine in the state of San Andreas who at all times own their shares in their own right; except that one or more persons licensed by the board as a physician assistant may be a shareholder of the corporation as long as the physician shareholders maintain majority ownership of the corporation. The shareholders shall be individuals who, except for illness, accident, time spent in the armed services, on vacations, and on leaves of absence not to exceed one year, are actively engaged in the practice of medicine or as a physician assistant in the offices of the corporation.

(II) If a person licensed to practice medicine who was a shareholder of the corporation dies, an heir to the deceased shareholder may become a shareholder of the corporation for up to two years, regardless of whether the heir is licensed to practice medicine. Unless the deceased shareholder was the only shareholder of the corporation, the heir who becomes a shareholder

shall be a nonvoting shareholder in all matters concerning the corporation. If the heir of the deceased shareholder ceases to be a shareholder, the shares shall be disposed of pursuant to subsection (1)(e) of this section.

(e) Provisions shall be made requiring any shareholder who ceases to be or for any reason is ineligible to be a shareholder to dispose of all of his or her shares forthwith, either to the corporation or to any person having the qualifications described in subsection (1)(d) of this section.

(f) The president shall be a shareholder and a director and, to the extent possible, all other directors and officers shall be persons having the qualifications described in subsection (1)(d) of this section. Lay directors, officers, and heirs of deceased shareholders shall not exercise any authority whatsoever over the independent medical judgment of persons licensed by the board to practice medicine in this state. Notwithstanding sections 7-108-103 to 7-108-106 relating to the terms of office and classification of directors, a professional service corporation for the practice of medicine may provide in the articles of incorporation or the bylaws that the directors may have terms of office of up to six years and that the directors may be divided into classes, with the terms of each class staggered to provide for the periodic election of less than all the directors. Nothing in this article 240 shall be construed to cause a professional service corporation to be vicariously liable to a patient or third person for the professional negligence or other tortious conduct of a physician who is a shareholder or employee of a professional service corporation.

(g) An heir to a deceased shareholder who becomes a shareholder shall be liable only to the same extent as the deceased shareholder would have been in his or her capacity as a shareholder, had he or she lived and remained a shareholder, for all acts, errors, and omissions of the employees of the corporation.

(h) The articles of incorporation provide and all shareholders of the corporation agree that all shareholders of the corporation are jointly and severally liable for all acts, errors, and omissions of the employees of the corporation or that all shareholders of the corporation are jointly and severally liable for all acts, errors, and omissions of the employees of the corporation, except during periods of time when each licensee who is a shareholder or any employee of the corporation has a professional liability policy insuring himself or herself and all employees who are not licensed pursuant to this article 240 who act at his or her direction, in the amount of fifty thousand dollars for each claim and an aggregate top limit of liability per year for all claims of one hundred fifty thousand dollars, or the corporation maintains in good standing professional liability insurance that meets the following minimum standards:

(I) The insurance insures the corporation against liability imposed upon the corporation by law for damages resulting from any claim made against the corporation arising out of the performance of professional services for others by those officers and employees of the corporation who are licensees.

(II) The policies insure the corporation against liability imposed upon it by law for damages arising out of the acts, errors, and omissions of all nonprofessional employees.

(III) The insurance is in an amount for each claim of at least fifty thousand dollars multiplied by the number of licensees employed by the corporation. The policy may provide for an aggregate top limit of liability per year for all claims of one hundred fifty thousand dollars also multiplied by the number of licensees employed by the corporation, but no firm shall be

required to carry insurance in excess of three hundred thousand dollars for each claim with an aggregate top limit of liability for all claims during the year of nine hundred thousand dollars.

(IV) The policy may provide that it does not apply to: Any dishonest, fraudulent, criminal, or malicious act or omission of the insured corporation or any stockholder or employee thereof; the conduct of any business enterprise, as distinguished from the practice of medicine, in which the insured corporation under this section is not permitted to engage but which nevertheless may be owned by the insured corporation or in which the insured corporation may be a partner or which may be controlled, operated, or managed by the insured corporation in its own or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith; when not resulting from breach of professional duty, bodily injury to, or sickness, disease, or death of any person, or to injury to or destruction of any tangible property, including the loss of use thereof; and the policy may contain reasonable provisions with respect to policy periods, territory, claims, conditions, and other usual matters.

(2) The corporation shall do nothing that, if done by a licensee employed by the corporation, would violate the standards of professional conduct as provided for in section 12-240-121. Any violation of this section by the corporation is grounds for the board to revoke or suspend the license of the person or persons responsible for the violation.

(3) Nothing in this section diminishes or changes the obligation of each licensee employed by the corporation to conduct his or her practice in accordance with the standards of professional conduct provided for in section 12-240-121. Any licensee who, by act or omission, causes the corporation to act or fail to act in a way that violates the standards of professional conduct, including any provision of this section, is personally responsible for such act or omission and is subject to discipline for the act or omission.

(4) Nothing in this section modifies the physician-patient privilege specified in section 13-90-107 (1)(d).

(5) A professional service corporation may adopt a pension, cash profit sharing, deferred profit sharing, health and accident, insurance, or welfare plan for all or part of its employees including lay employees if the plan does not require or result in the sharing of specific or identifiable fees with lay employees, and if any payments made to lay employees, or into any plan in behalf of lay employees, are based upon their compensation or length of service, or both, rather than the amount of fees or income received.

(6) (a) Corporations shall not practice medicine. Nothing in this section shall be construed to abrogate a cause of action against a professional corporation for its independent acts of negligence.

(b) Employment of a physician in accordance with section 25-3-103.7 shall not be considered the corporate practice of medicine.

(7) As used in this section, unless the context otherwise requires:

(a) "Articles of incorporation" includes operating agreements of limited liability companies and partnership agreements of registered limited liability partnerships.

(b) "Corporation" includes a limited liability company organized under the "San Andreas Limited Liability Company Act", article 80 of title 7, and a limited liability partnership registered under section 7-60-144 or 7-64-1002; except that the name of an entity other than a corporation shall contain the word "professional" or the abbreviation "prof." in addition to any other words required by the statute under which the entity is organized.

(c) "Director" and "officer" of a corporation includes a member and a manager of a limited liability company and a partner in a registered limited liability partnership.

(d) "Employees" includes employees, members, and managers of a limited liability company and employees and partners of a registered limited liability partnership.

(e) "President" includes all managers, if any, of a limited liability company and all partners in a registered limited liability partnership.

(f) "Share" includes a member's rights in a limited liability company and a partner's rights in a registered limited liability partnership.

(g) "Shareholder" includes a member of a limited liability company and a partner in a registered limited liability partnership.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1212, § 1, effective October 1.

Editor's note: This section is similar to former § 12-36-134 as it existed prior to 2019.

12-240-139. Injuries to be reported - exemptions - penalty for failure to report - immunity from liability - definitions. (1) (a) (I) Every licensee who attends or treats any of the following injuries shall report the injury at once to the police of the city, town, or city and county or the sheriff of the county in which the licensee is located:

(A) A bullet wound, a gunshot wound, a powder burn, or any other injury arising from the discharge of a firearm, or an injury caused by a knife, an ice pick, or any other sharp or pointed instrument that the licensee believes to have been intentionally inflicted upon a person;

(B) An injury arising from a dog bite that the licensee believes was inflicted upon a person by a dangerous dog, as defined in section 18-9-204.5 (2)(b); or

(C) Any other injury that the licensee has reason to believe involves a criminal act other than the possession of drugs or drug paraphernalia under section 18-18-403.5 or 18-18-428; except that a licensee is not required to report an injury that the licensee has reason to believe resulted from domestic violence unless the licensee is required to report the injury pursuant to subsection (1)(a)(I)(A) or (1)(a)(I)(B) of this section or the injury is a serious bodily injury, as defined in section 18-1-901 (3)(p).

(II) Any licensee who fails to make a report as required by this section commits a petty offense as defined by section 18-1.3-503.

(III) Except as described in subsection (1)(a)(I)(C) of this section, a licensee may, but is not required to, report an injury that he or she has reason to believe occurred as a result of domestic violence if:

(A) The victim of the injury is at least eighteen years of age and indicates his or her preference that the injury not be reported; and

(B) The injury is not an injury that the licensee is required to report pursuant to subsection (1)(a)(I)(A) or (1)(a)(I)(B) of this section.

(IV) If a licensee does not report an injury pursuant to a victim's request, as described in subsection (1)(a)(III) of this section, the licensee shall document the victim's request in the victim's medical record.

(V) Before a licensee reports an injury that he or she has reason to believe resulted from domestic violence, as described in subsection (1)(a)(III) of this section, the licensee shall make a good-faith effort, confidentially, to advise the victim of the licensee's intent to do so.

(VI) If a licensee has reason to believe that an injury resulted from domestic violence, then, regardless of whether the licensee reports the injury to law enforcement, the licensee shall either refer the victim to a victim's advocate, as defined in section 13-90-107 (1)(k)(II), or provide the victim with information concerning services available to victims of abuse.

(b) (I) When a licensee, nurse, or certified midwife performs a medical forensic examination that includes the collection of evidence at the request of a victim of sexual assault, the licensee's, nurse's, or certified midwife's employing medical facility shall, with the consent of the victim of the sexual assault, make one of the following reports to law enforcement:

(A) A law enforcement report if a victim wishes to obtain a medical forensic examination with evidence collection and at the time of the medical forensic examination chooses to participate in the criminal justice system;

(B) A medical report if a victim wishes to obtain a medical forensic examination with evidence collection but at the time of the medical forensic examination chooses not to participate in the criminal justice system. The licensee, nurse, or certified midwife shall collect the evidence and victim-identifying information, and the employing medical facility shall release the evidence and information to law enforcement for testing in accordance with section 24-33.5-113 (1)(b)(III) and storage in accordance with section 18-3-407.5 (3)(c).

(C) An anonymous report if a victim wishes to obtain a medical forensic examination with evidence collection but at the time of the medical forensic examination chooses not to have personal identifying information provided to law enforcement or to participate in the criminal justice system. The licensee, nurse, or certified midwife shall collect the evidence, and the employing medical facility shall release it to law enforcement for storage in accordance with section 18-3-407.5 (3)(c). Law enforcement shall receive no identifying information for the victim. Law enforcement shall assign a unique identifying number to the evidence, and the licensee, nurse, or certified midwife shall record the identifying number in the medical record and notify the victim that the identifying number is recorded. Additionally, the licensee, nurse, or certified midwife shall provide the identifying number to the victim.

(II) Nothing in this section:

(A) Prohibits a victim from anonymously speaking to law enforcement about the victim's rights or options prior to determining whether to consent to a report described in this subsection (1)(b); or

(B) Requires a licensee, nurse, certified midwife, or medical facility to make a report to law enforcement concerning an alleged sexual assault if medical forensic evidence is not collected.

(III) If the licensee's, nurse's, or certified midwife's employing medical facility knows where the alleged sexual assault occurred, the facility shall make the report with the law enforcement agency in whose jurisdiction the crime occurred regarding preservation of the evidence. If the medical facility does not know where the alleged sexual assault occurred, the facility shall make the report with its local law enforcement agency regarding preservation of the evidence.

(IV) In addition to the report required by subsection (1)(b)(I) of this section to be filed by the employing medical facility, a licensee who attends or treats any of the injuries described

in subsection (1)(a)(I)(A) of this section of a victim of a sexual assault shall also report the injury to the police or sheriff as required by subsection (1)(a) of this section.

(V) A licensee, nurse, or certified midwife who performs a medical forensic examination as described in subsection (1)(b)(I) of this section shall inform the victim:

(A) Of the contact information for the nearest sexual assault victim's advocate if the victim makes a law enforcement report pursuant to subsection (1)(b)(I)(A) of this section;

(B) Of the contact information for the nearest community-based victim advocate pursuant to section 13-90-107 (1)(k)(II) if the victim makes a medical report pursuant to subsection (1)(b)(I)(B) of this section or an anonymous report pursuant to subsection (1)(b)(I)(C) of this section; and

(C) That any forensic medical evidence collected must be maintained until after the assailant may no longer be prosecuted for the crime and that the victim must be notified prior to the destruction of such evidence.

(2) As used in subsection (1) of this section, unless the context otherwise requires:

(a) "Domestic violence" means an act of violence upon a person with whom the actor is or has been involved in an intimate relationship. Domestic violence also includes any other crime against a person or any municipal ordinance violation against a person when used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the actor is or has been involved in an intimate relationship.

(b) "Intimate relationship" means a relationship between spouses, former spouses, past or present unmarried couples, or persons who are both the parents of the same child, regardless of whether the persons have been married or have lived together at any time.

(3) (a) Any licensee who, in good faith, makes a report pursuant to subsection (1) of this section or does not make a report as described in subsection (1)(a)(III) of this section is immune from any liability, civil or criminal, that might otherwise be incurred or imposed with respect to the making of such report and has the same immunity with respect to participation in any judicial proceeding resulting from the report.

(b) A licensee who, in good faith, refers a victim to a victim's advocate or provides a victim with information concerning services available to victims of abuse, as described in subsection (1)(a)(VI) of this section, is not civilly liable for any act or omission of the victim's advocate or of any agency that provides such services to the victim.

(4) Any licensee who makes a report pursuant to subsection (1) of this section shall not be subject to the physician-patient relationship described in section 13-90-107 (1)(d) as to the medical examination and diagnosis. The licensee may be examined as a witness, but not as to any statements made by the patient that are the subject matter of section 13-90-107 (1)(d).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1215, § 1, effective October 1. **L. 2021:** (1)(b)(V) added, (HB 21-1143), ch. 191, p. 1011, § 2, effective May 27; (1)(a)(II) amended, (SB 21-271), ch. 462, pp. 3156, 3157, §§ 147, 150, effective March 1, 2022. **L. 2023:** IP(1)(b)(I), (1)(b)(I)(B), (1)(b)(I)(C), (1)(b)(II)(B), (1)(b)(III), and IP(1)(b)(V) amended, (SB 23-167), ch. 261, p. 1544, § 46, effective May 25. **L. 2024:** (1)(a)(I)(C) amended, (HB 24-1037), ch. 458, p. 3161, § 1, effective June 6.

Editor's note: (1) This section is similar to former § 12-36-135 as it existed prior to 2019.

(2) Amendments to subsection (1)(a)(II) by sections 147 and 150 of SB 21-271 were harmonized.

Cross references: For the legislative declaration in HB 21-1143, see section 1 of chapter 191, Session Laws of San Andreas 2021.

12-240-140. Determination of death. (1) An individual is dead if:

(a) The individual has sustained irreversible cessation of circulatory and respiratory functions; or

(b) The individual has sustained irreversible cessation of all functions of the entire brain, including the brain stem.

(2) A determination of death under this section shall be in accordance with accepted medical standards.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1218, § 1, effective October 1.

Editor's note: This section is similar to former § 12-36-136 as it existed prior to 2019.

12-240-141. Inactive license. (1) Any licensee pursuant to section 12-240-117 may apply to the board to be transferred to an inactive status. The application shall be in the form and manner designated by the board. The board may grant inactive status by issuing an inactive license or it may deny the application as set forth in section 12-240-120.

(2) Any person applying for a license under this section shall:

(a) Provide an affidavit to the board that the applicant, after a date certain, will not practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant in this state unless the applicant is issued a license to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant pursuant to subsection (5) of this section;

(b) Pay the license fee as authorized pursuant to section 12-240-130; and

(c) Comply with any financial responsibility standards promulgated by the board pursuant to section 13-64-301 (1).

(3) The inactive status shall be plainly indicated on the face of any inactive license issued under this section.

(4) The board is authorized to undertake disciplinary proceedings as set forth in sections 12-240-121 and 12-240-125 against any person licensed under this section for any act committed while the person was licensed pursuant to this article 240.

(5) Any person licensed under this section who wishes to resume the practice of medicine or to resume practice as a physician assistant shall file an application in the form and manner the board shall designate, meet the required applicable continuing medical education requirements pursuant to section 12-240-130.5, pay the license fee promulgated by the board pursuant to section 12-240-130, and meet the financial responsibility requirements promulgated by the board pursuant to section 13-64-301 (1). The board may approve the application and issue a license or may deny the application as set forth in section 12-240-120.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1218, § 1, effective October 1. **L. 2024:** (5) amended, (HB 24-1153), ch. 385, p. 2630, § 6, effective August 7.

Editor's note: This section is similar to former § 12-36-137 as it existed prior to 2019.

12-240-142. Protection of medical records - licensee's obligations - verification of compliance - noncompliance grounds for discipline - rules. (1) Each licensed physician and physician assistant shall develop a written plan to ensure the security of patient medical records. The plan shall address at least the following:

(a) The storage and proper disposal, if appropriate, of patient medical records;

(b) The disposition of patient medical records in the event the licensee dies, retires, or otherwise ceases to practice or provide medical care to patients; and

(c) The method by which patients may access or obtain their medical records promptly if any of the events described in subsection (1)(b) of this section occur.

(2) Upon initial licensure under this article 240 and upon renewal of a license, the applicant or licensee, as applicable, shall attest to the board that he or she has developed a plan in compliance with this section.

(3) A licensee shall inform each patient, in writing, of the method by which the patient may access or obtain his or her medical records if an event described in subsection (1)(b) of this section occurs.

(4) A licensee who fails to comply with this section shall be subject to discipline in accordance with section 12-240-125.

(5) The board may adopt rules as necessary to implement this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1219, § 1, effective October 1.

Editor's note: This section is similar to former § 12-36-140 as it existed prior to 2019.

12-240-143. Medical marijuana recommendations - guidelines. The board, in consultation with the department of public health and environment and physicians specializing in medical marijuana, shall establish guidelines for physicians making medical marijuana recommendations.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1220, § 1, effective October 1.

Editor's note: This section is similar to former § 12-36-141 as it existed prior to 2019.

12-240-144. Licensee duties relating to assistance animals - definitions. (1) A licensee who is approached by a patient seeking an assistance animal as a reasonable accommodation in housing shall either:

(a) Make a written finding regarding whether the patient has a disability and, if a disability is found, a separate written finding regarding whether the need for the animal is related to that disability; or

(b) Make a written finding that there is insufficient information available to make a finding regarding disability or the disability-related need for the animal.

(2) This section does not:

(a) Change any laws or procedures related to a service animal under Title II and Title III of the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., as amended;

(b) Affect in any way the right of pet ownership in public housing established in 42 U.S.C. sec. 1437z-3, as amended; or

(c) Limit the means by which a person with a disability may demonstrate, pursuant to state or federal law, that the person has a disability or that the person has a disability-related need for an assistance animal.

(3) A licensee shall not make a determination related to subsection (1) of this section unless the licensee:

(a) Has met with the patient in person or by telemedicine;

(b) Is sufficiently familiar with the patient and the disability; and

(c) Is legally and professionally qualified to make the determination.

(4) For purposes of this section:

(a) "Assistance animal" means an animal that qualifies as a reasonable accommodation under the federal "Fair Housing Act", 42 U.S.C. sec. 3601 et seq., as amended, or section 504 of the federal "Rehabilitation Act of 1973", 29 U.S.C. sec. 794, as amended.

(b) "Disability" has the same meaning as set forth in the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., and its related amendments and implementing regulations and includes a handicap as that term is defined in the federal "Fair Housing Act", 42 U.S.C. sec. 3601 et seq., as amended, and 24 CFR 100.201.

(c) "Service animal" has the same meaning as set forth in the implementing regulations of Title II and Title III of the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., as amended.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1220, § 1, effective October 1.

Editor's note: This section is similar to former § 12-36-142 as it existed prior to 2019.

12-240-145. Prescription medications - financial benefit for prescribing prohibited. A physician or physician assistant shall not accept any direct or indirect benefit from a pharmaceutical manufacturer or pharmaceutical representative for prescribing a specific medication to a patient. For the purposes of this section, a direct or indirect benefit does not include a benefit offered to a physician or physician assistant regardless of whether the specific medication is being prescribed.

Source: L. 2019: Entire section added, (SB 19-228), ch. 276, p. 2610, § 15, effective October 1.

Editor's note: This section is similar to § 12-36-117.8 as added in SB 19-228. That section was superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For the former section in effect from May 23, 2019, to October 1, 2019, see SB 19-228, chapter 276, Session Laws of San Andreas 2019.

12-240-146. Interstate compact - powers and duties of the board - rules - definitions. (1) As used in this section:

(a) "Adverse action" has the meaning set forth in section 24-60-4702.

(b) "Commission" means the PA licensure compact commission created in section 24-60-4702.

(c) "Compact" means the physician assistant licensure compact authorized in part 47 of article 60 of title 24.

(d) "Compact privilege" has the meaning set forth in section 24-60-4702.

(e) "Data system" has the meaning set forth in section 24-60-4702.

(f) "Investigative information" has the meaning set forth in section 24-60-4702.

(g) "Licensee" has the meaning set forth in section 24-60-4702.

(h) "Licensing board" has the meaning set forth in section 24-60-4702.

(i) "Medical services" has the meaning set forth in section 24-60-4702.

(j) "Participating state" means a state that has enacted the compact.

(k) "Significant investigative information" has the meaning set forth in section 24-60-4702.

(2) In addition to any powers and duties specified in the compact for participating states, the board has the following powers and duties with regard to the compact:

(a) To facilitate San Andreas's participation in the compact;

(b) To comply with the rules of the commission;

(c) To promulgate rules in accordance with article 4 of title 24 as necessary for the implementation, administration, and enforcement of the compact;

(d) To appoint a person to serve as a delegate on and attend meetings of the commission in accordance with the terms of the compact;

(e) To notify the commission, in compliance with the terms of the compact and commission rules, of any adverse action or the availability of significant investigative information regarding a licensee;

(f) To require a licensee to submit to a fingerprint-based criminal history record check in accordance with the following:

(I) The applicant must pay the costs associated with the fingerprint-based criminal history record check;

(II) After submitting an application for a compact privilege, the applicant shall have the applicant's fingerprints taken by a local law enforcement agency or any third party approved by the San Andreas bureau of investigation for the purpose of obtaining a fingerprint-based criminal history record check. The applicant shall authorize the entity taking the applicant's fingerprints to submit, and the entity shall submit, the complete set of the applicant's fingerprints to the San Andreas bureau of investigation for the purpose of conducting a fingerprint-based criminal history record check.

(III) If an approved third party takes the person's fingerprints, the fingerprints may be electronically captured using San Andreas bureau of investigation-approved livescan equipment. Third-party vendors shall not keep the applicant's information for more than thirty days.

(IV) The San Andreas bureau of investigation shall use the applicant's fingerprints to conduct a criminal history record check using the bureau's records. The San Andreas bureau of investigation shall also forward the fingerprints to the federal bureau of investigation for the purpose of conducting a fingerprint-based criminal history record check. The San Andreas bureau of investigation, applicant, board, and entity taking fingerprints shall comply with the federal bureau of investigation's requirements to conduct a criminal history record check.

(V) The San Andreas bureau of investigation shall return the results of its criminal history record check to the board, and the board is authorized to receive the results of the federal bureau of investigation's criminal history record check. The board shall use the information resulting from the criminal history record checks to investigate and determine whether an applicant is qualified for a compact privilege.

(VI) The results of the record check are confidential. The board shall not release the results of the record check to the public, the commission, a participating state, or other state licensing boards.

(g) To grant a compact privilege to a licensee of a participating state in accordance with the terms of the compact and to charge a fee to individuals applying for the compact privilege;

(h) To participate fully in the data system consistent with the compact requirements and the rules of the commission; and

(i) To approve payment of assessments levied by the commission to cover the cost of operations and activities of the commission and its staff.

(3) A physician assistant providing medical services to a patient in San Andreas pursuant to the compact is subject to the requirements of sections 12-240-107 (6) and 12-240-114.5 and, if the physician assistant is practicing podiatry, section 12-290-117.

Source: L. 2024: Entire section added, (SB 24-018), ch. 194, p. 1187, § 2, effective August 7.

ARTICLE 245

Mental Health

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 245 was numbered as article 43 of this title 12 prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

Law reviews: For article, "Nailing Jello to the Wall: San Andreas Regulates Psychotherapists", see 19 S.A. Law. 71 (1990); for article, "Litigating Disputes Involving the Medical Marijuana Industry", see 41 S.A. Law. 103 (Aug. 2012); for article, "What's Your Plan? Examining Mental Health Experts in Family Law", see 52 S.A. Law. 34 (Jan.-Feb. 2023).

PART 1

LEGISLATIVE DECLARATION

12-245-101. Legislative declaration. (1) The general assembly hereby finds and determines that, in order to safeguard the public health, safety, and welfare of the people of this state and in order to protect the people of this state against the unauthorized, unqualified, and improper application of psychology, social work, marriage and family therapy, professional counseling, psychotherapy, and addiction counseling, it is necessary that the proper regulatory authorities be established and adequately provided for.

(2) The general assembly therefore declares that there shall be established a state board of psychologist examiners, a state board of social work examiners, a state board of marriage and family therapist examiners, a state board of licensed professional counselor examiners, a state board of unlicensed psychotherapists, and a state board of addiction counselor examiners with the authority to license, register, or certify, and take disciplinary actions or bring injunctive actions, or both, concerning licensed psychologists and psychologist candidates, licensed social workers and clinical social worker candidates, licensed marriage and family therapists and marriage and family therapist candidates, licensed professional counselors and licensed professional counselor candidates, unlicensed psychotherapists, and licensed and certified addiction counselors and addiction counselor candidates, respectively, and mental health professionals who have been issued a provisional license pursuant to this article 245.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1221, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1206), ch. 304, p. 1544, § 45, effective July 14. **L. 2022:** Entire section amended, (HB 22-1307), ch. 207, p. 1371, § 2, effective August 10.

Editor's note: This section is similar to former § 12-43-101 as it existed prior to 2019.

PART 2

GENERAL PROVISIONS

12-245-201. Applicability of common provisions. Articles 1, 20, and 30 of this title 12 apply, according to their terms, to this article 245.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1221, § 1, effective October 1.

12-245-202. Definitions. As used in this article 245, unless the context otherwise requires:

(1) "Board" includes the state board of psychologist examiners, the state board of social work examiners, the state board of licensed professional counselor examiners, the state board of marriage and family therapist examiners, the state board of unlicensed psychotherapists, and the state board of addiction counselor examiners.

(2) "Certificate holder" means an addiction counselor certified pursuant to this article 245.

(3) "Certified addiction counselor" means a person who is an addiction counselor certified pursuant to this article 245.

(3.5) (a) "Conversion therapy" means any practice or treatment by a licensee, registrant, or certificate holder that attempts or purports to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attraction or feelings toward individuals of the same sex.

(b) "Conversion therapy" does not include practices or treatments that provide:

(I) Acceptance, support, and understanding for the facilitation of an individual's coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as the counseling does not seek to change sexual orientation or gender identity; or

(II) Assistance to a person undergoing gender transition.

(4) "Dementia diseases and related disabilities" has the same meaning set forth in section 25-1-502 (2.5).

(5) "Licensed addiction counselor" means a person who is an addiction counselor licensed pursuant to this article 245.

(6) "Licensed professional counselor" means a person who is a professional counselor licensed pursuant to this article 245.

(7) "Licensed social worker" means a person who:

(a) Is a licensed social worker or licensed clinical social worker; and

(b) Is licensed pursuant to this article 245.

(8) "Licensee" means a psychologist, social worker, clinical social worker, marriage and family therapist, licensed professional counselor, or addiction counselor licensed pursuant to this article 245.

(9) "Marriage and family therapist" means a person who is a marriage and family therapist licensed pursuant to this article 245.

(10) "Professional relationship" means an interaction that is deliberately planned or directed, or both, by the licensee, registrant, or certificate holder toward obtaining specific objectives.

(11) "Provisional license" means a license or certification issued pursuant to section 12-245-208.

(12) "Provisional licensee" means a person who holds a provisional license pursuant to section 12-245-208.

(13) "Psychologist" means a person who is a psychologist licensed pursuant to this article 245.

(14) (a) "Psychotherapy" or "psychotherapy services" means the treatment, diagnosis, testing, assessment, or counseling in a professional relationship to assist individuals or groups to alleviate behavioral and mental health disorders, understand unconscious or conscious motivation, resolve emotional, relationship, or attitudinal conflicts, or modify behaviors that interfere with effective emotional, social, or intellectual functioning. Psychotherapy follows a planned procedure of intervention that takes place on a regular basis, over a period of time, or in the cases of testing, assessment, and brief psychotherapy, psychotherapy can be a single intervention.

(b) It is the intent of the general assembly that the definition of psychotherapy as used in this article 245 be interpreted in its narrowest sense to regulate only those persons who clearly fall within the definition set forth in this subsection (14).

(15) Repealed.

(16) "Registrant" means a psychologist candidate, clinical social worker candidate, marriage and family therapist candidate, licensed professional counselor candidate, or addiction counselor candidate registered pursuant to section 12-245-304 (3), 12-245-404 (4), 12-245-504 (4), 12-245-604 (4), or 12-245-804 (3.7), respectively, or an unlicensed psychotherapist.

(17) (a) "Unlicensed psychotherapist" means a person:

(I) Whose primary practice is psychotherapy or who holds himself or herself out to the public as being able to practice psychotherapy for compensation; and

(II) Who is registered with the state board of unlicensed psychotherapists pursuant to section 12-245-703 to practice psychotherapy in this state.

(b) "Unlicensed psychotherapist" also includes a person who:

(I) Is a licensed school psychologist licensed pursuant to section 22-60.5-210 (1)(b);

(II) Is practicing outside of a school setting; and

(III) Is registered with the state board of unlicensed psychotherapists pursuant to section 12-245-703.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1221, § 1, effective October 1; (3.5) added, (HB 19-1129), ch. 378, p. 3411, § 7, effective October 1; (14)(a) amended, (HB 19-1120), ch. 197, p. 2150, § 6, effective October 1. **L. 2020:** (1) and (16) amended, (15) repealed, and (17) added, (HB 20-1206), ch. 304, p. 1545, § 46, effective July 14. **L. 2022:** (16) amended, (HB 22-1307), ch. 207, p. 1372, § 3, effective August 10.

Editor's note: (1) This section is similar to former § 12-43-201 as it existed prior to 2019.

(2) (a) Before its relocation in 2019, this section was amended in HB 19-1129. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see HB 19-1129, chapter 378, Session Laws of San Andreas 2019.

(b) Before its relocation in 2019, this section was amended in HB 19-1120. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from May 16, 2019, to October 1, 2019, see HB 19-1120, chapter 197, Session Laws of San Andreas 2019.

Cross references: For the legislative declaration in HB 19-1120, see section 1 of chapter 197, Session Laws of San Andreas 2019.

12-245-203. Practice outside of or beyond professional training, experience, or competence - general scope of practice for licensure, registration, or certification. (1) Notwithstanding any other provision of this article 245, no licensee, registrant, or certificate holder is authorized to practice outside of or beyond the person's area of training, experience, or competence.

(2) The practice of psychotherapy is one area of practice for mental health professionals licensed, certified, or registered pursuant to this article 245 but may not be the only or primary practice area of the professionals, other than persons registered as unlicensed psychotherapists pursuant to part 7 of this article 245. The requirements for licensure, registration, or certification as a mental health professional pursuant to this article 245 are contained in sections 12-245-303, 12-245-403, 12-245-503, 12-245-603, and 12-245-803, which define the practice of psychology, social work, marriage and family therapy, licensed professional counseling, and addiction counseling, respectively.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1223, § 1, effective October 1. **L. 2020:** (2) amended, (HB 20-1206), ch. 304, p. 1546, § 47, effective July 14.

Editor's note: This section is similar to former § 12-43-202 as it existed prior to 2019.

12-245-203.5. Minors - consent for outpatient psychotherapy services - immunity - definition. (1) As used in this section, unless the context otherwise requires, "mental health professional" includes a professional person as defined in section 27-65-102 (27); a mental health professional licensed pursuant to part 3, 4, 5, 6, or 8 of this article 245; a licensed professional counselor candidate; a psychologist candidate; a clinical social worker candidate; a marriage and family therapist candidate; or an addiction counselor candidate.

(2) (a) Notwithstanding any other provision of law, a mental health professional may provide psychotherapy services, as defined in section 12-245-202 (14)(a), to a minor who is twelve years of age or older, without the consent of the minor's parent or legal guardian, if the mental health professional determines that:

(I) The minor is knowingly and voluntarily seeking such services; and

(II) The provision of psychotherapy services is clinically indicated and necessary to the minor's well-being.

(b) A minor may not refuse psychotherapy services when a mental health professional and the minor's parent or legal guardian agree psychotherapy services are in the best interest of the minor.

(3) If a minor voluntarily seeks psychotherapy services on the minor's own behalf pursuant to subsection (2)(a) of this section:

(a) The mental health professional may notify the minor's parent or legal guardian of the psychotherapy services given or needed, with the minor's consent, unless notifying the parent or legal guardian would be inappropriate or detrimental to the minor's care and treatment;

(b) The mental health professional shall engage the minor in a discussion about the importance of involving and notifying the minor's parent or legal guardian and shall encourage such notification to help support the minor's care and treatment; and

(c) Notwithstanding the provisions of subsection (3)(a) of this section, a mental health professional may notify the minor's parent or legal guardian of the psychotherapy services given or needed, without the minor's consent, if, in the professional opinion of the mental health professional, the minor is unable to manage the minor's care or treatment.

(4) A mental health professional shall fully document when the mental health professional attempts to contact or notify the minor's parent or legal guardian and whether the

attempt was successful or unsuccessful, or the reason why, in the mental health professional's opinion, it would be inappropriate to contact or notify the minor's parent or legal guardian. If a minor seeks psychotherapy services on the minor's own behalf pursuant to subsection (2)(a) of this section, documentation must be included in the minor's clinical record, along with a written statement signed by the minor indicating that the minor is voluntarily seeking psychotherapy services.

(5) Psychotherapy services must be provided in a culturally appropriate manner. Written and oral instruction, training of providers and staff, and the overall provision of services must be culturally appropriate and provided in a manner and format to support individuals with limited English proficiency or challenges with accessibility related to a disability and with respect for diverse backgrounds, including individuals with different cultural origins and individuals who are lesbian, gay, bisexual, or transgender.

(6) As used in this section, "psychotherapy services" does not include inpatient psychotherapy services.

(7) If a minor who is receiving psychotherapy services pursuant to this section communicates a serious threat of imminent physical violence against a specific person or persons, including a person who is identifiable by the person's association with a specific location or entity, the mental health professional is subject to the notification provisions of section 13-21-117 (2) and shall notify the minor's parent or legal guardian unless notifying the parent or legal guardian would be inappropriate or detrimental to the minor's care and treatment.

(8) Repealed.

Source: L. 2019: Entire section added, (HB 19-1120), ch. 197, p. 2150, § 7, effective October 1. **L. 2022:** (1), (2), (3), (4), and (7) amended and (8) repealed, (HB 22-1278), ch. 222, p. 1488, § 5, effective July 1; (1) amended, (HB 22-1256), ch. 451, p. 3223, § 9, effective August 10.

Editor's note: (1) This section is similar to § 12-43-202.5 as added in HB 19-1120. That section was superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For the former section in effect from May 16, 2019, to October 1, 2019, see HB 19-1120, chapter 197, Session Laws of San Andreas 2019.

(2) Amendments to subsection (1) by HB 22-1278 and HB 22-1256 were harmonized.

Cross references: For the legislative declaration in HB 19-1120, see section 1 of chapter 197, Session Laws of San Andreas 2019.

12-245-204. Boards - division to supervise - meetings - duties - powers - rules - removal of members - limitation on authority. (1) Each board shall be under the supervision and control of the division.

(2) In addition to all other powers and duties conferred or imposed upon each board by this article 245 or by any other law, each board shall have the powers specified in this section.

(3) (a) (I) Each board shall annually hold a meeting and elect from its membership a chairperson and vice-chairperson. Each board shall meet at such times as it deems necessary or advisable or as deemed necessary and advisable by the chairperson or a majority of its members. Each board may conduct meetings by electronic means. Each board shall give reasonable notice

of its meetings in the manner prescribed by law. A majority of each board constitutes a quorum at any meeting or hearing.

(II) All meetings are open to the public, except when:

(A) A board, or an administrative law judge acting on behalf of a board, specifically determines that the harm to a complainant or other recipient of services to keep the proceedings or related documents open to the public outweighs the public interest in observing the proceedings; or

(B) The licensee, registrant, or certificate holder is participating in good faith in a program approved by the board designed to end a substance use disorder and the licensee, registrant, or certificate holder has not violated the board's order regarding the person's participation in the treatment program.

(III) If the board determines that it is in the best interest of a complainant or other recipient of services to keep proceedings or related documents closed to the public, the final action of the board must be open to the public without disclosing the name of the client or other recipient. In all open meetings, the board shall take reasonable steps to keep the names of the recipients of services confidential.

(b) The proceedings of each board shall be conducted pursuant to article 4 of title 24.

(4) Each board is authorized to:

(a) Adopt, and from time to time revise, rules pursuant to section 12-20-204;

(b) Adopt an examination;

(c) Examine for, deny, withhold, or approve the license of an applicant pursuant to section 12-245-214, and renew licenses pursuant to section 12-245-205;

(d) Appoint advisory committees to assist in the performance of its duties;

(e) Conduct hearings in accordance with section 12-20-403 as necessary to carry out its powers and duties.

(5) In carrying out its duties related to the approval of applications for licensure, registration, or certification pursuant to this section, section 12-245-214, and this article 245, each board shall delegate the function of the preliminary review and approval of applications to the staff of the board, with approval of an application ratified by action of the board if ratification is deemed necessary by the board. Each board, in its sole discretion, may individually review any application requiring board consideration prior to the approval of the application pursuant to section 12-245-214 and this article 245.

(6) Each board shall maintain current lists of the names of all licensees, registrants, and certificate holders and records of cases and decisions rendered by the board. In addition, each board shall keep an accurate record of the results of all examinations.

(7) Publications of each board intended for circulation in quantity outside the board shall be issued in accordance with the provisions of section 24-1-136.

(8) Any board member having an immediate personal, private, or financial interest in any matter pending before the board shall disclose the fact and shall not vote upon the matter.

(9) The governor may remove any board member for misconduct, incompetence, or neglect of duty. Actions constituting neglect of duty shall include, but not be limited to, the failure of board members to attend three consecutive meetings or at least three-quarters of the board's meetings in any one calendar year.

(10) The boards shall develop rules or policies to provide guidance to persons licensed, registered, or certified pursuant to this article 245 to assist in determining whether a relationship

with a client or potential client is likely to impair his or her professional judgment or increase the risk of client exploitation in violation of section 12-245-224 (1)(i).

(11) The authority granted each board under the provisions of this article 245 does not authorize a board to arbitrate or adjudicate fee disputes between licensees, registrants, or certificate holders, or between a licensee, registrant, or certificate holder and any other party.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1224, § 1, effective October 1. **L. 2020:** (5) amended, (HB 20-1206), ch. 304, p. 1525, § 3, effective July 14.

Editor's note: Subsection (1) is similar to former § 12-43-210; subsection (2) is similar to former § 12-43-203 (1); subsection (3) is similar to former § 12-43-203 (2); subsection (4) is similar to former § 12-43-203 (3); subsection (5) is similar to former § 12-43-203 (3.5); subsection (6) is similar to former § 12-43-203 (4); subsection (7) is similar to former § 12-43-203 (6); subsection (8) is similar to former § 12-43-203 (9); subsection (9) is similar to former § 12-43-203 (10); subsection (10) is similar to former § 12-43-203 (12); and subsection (11) is similar to former § 12-43-203.5, as those sections existed prior to 2019.

12-245-205. Fees - renewal. (1) All fees collected pursuant to this article 245 shall be determined, collected, and appropriated in the same manner as set forth in section 12-20-105.

(2) Each board may charge fees established pursuant to section 12-20-105 to all applicants for licensure, registration, or certification under this article 245.

(3) Each license, registration, or certification issued pursuant to this article 245 is subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2). Any person whose license, registration, or certification expires is subject to the penalties provided in this article 245 or section 12-20-202 (1).

(4) The director shall coordinate fee-setting pursuant to this section so that all licensees, registrants, and certificate holders pay fees as required by this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1226, § 1, effective October 1. **L. 2020:** (4) amended, (HB 20-1206), ch. 304, p. 1546, § 48, effective July 14.

Editor's note: This section is similar to former § 12-43-204 as it existed prior to 2019.

12-245-206. Records. (1) Each board shall keep a record of proceedings and a register of all applications for licenses, registrations, or certifications, which must include:

(a) The name and age of each applicant;

(b) The date of the application;

(c) The mailing address of the applicant;

(d) A summary of the educational and other qualifications of each applicant;

(e) Whether or not an examination was required and, if required, proof that the applicant passed the examination;

(f) Whether licensure, registration, or certification was granted;

(g) The date of the action of the board;

(h) Other information the board deems necessary or advisable in aid of the requirements of this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1226, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43-205 as it existed prior to 2019.

12-245-207. Licensure by endorsement. A board may issue a license by endorsement to engage in the practice of psychology, social work, marriage and family therapy, professional counseling, or addiction counseling to an applicant who satisfies the requirements of the occupational credential portability program.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1227, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1326), ch. 126, p. 540, § 28, effective June 25.

Editor's note: This section is similar to former § 12-43-206 as it existed prior to 2019.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-245-208. Provisional license - fees. (1) (a) The board may issue a provisional license to an applicant who has completed a postgraduate degree that meets the educational requirements for licensure in section 12-245-304, 12-245-404, 12-245-504, 12-245-604, or 12-245-804, as applicable, and who is working in a residential child care facility, as defined in section 26-6-903, under the supervision of a licensee.

(b) A provisional license issued pursuant to subsection (1)(a) of this section terminates at the earliest of:

(I) Thirty days after termination of the provisional licensee's employment with a qualifying residential child care facility, unless the provisional licensee obtains and submits to the board proof of employment with another residential child care facility; or

(II) Thirty days after termination of the provisional licensee's supervision by a licensee unless the provisional licensee obtains and submits to the board proof of supervision by another licensee.

(c) A provisional licensee shall notify the board of any change in supervision within thirty days after the change.

(2) Each board may charge an application fee to an applicant for a provisional license as provided in section 12-20-105. An application for a provisional license must identify the name, contact information, and license number of the licensee providing supervision of the provisional licensure applicant.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1227, § 1, effective October 1. **L. 2022:** (1)(a) amended, (HB 22-1295), ch. 123, p. 826, § 22, effective July 1.

Editor's note: This section is similar to former § 12-43-206.5 as it existed prior to 2019.

12-245-209. License - issuance. Each board shall issue a license, registration, or certification, as appropriate, when an applicant successfully qualifies for licensure, registration, or certification as provided in this article 245.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1228, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43-207 as it existed prior to 2019.

12-245-210. Prohibition against prescribing drugs or practicing medicine - exception for opioid antagonist. (1) Nothing in this article 245 permits psychologists, social workers, marriage and family therapists, licensed professional counselors, unlicensed psychotherapists, and addiction counselors licensed, certified, or registered under this article 245 to administer or prescribe drugs or in any manner engage in the practice of medicine as defined by the laws of this state.

(2) Notwithstanding subsection (1) of this section, a psychologist, social worker, marriage and family therapist, licensed professional counselor, unlicensed psychotherapist, or addiction counselor licensed, registered, or certified under this article 245 may possess, furnish, or administer an opioid antagonist in accordance with section 12-30-110.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1228, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1206), ch. 304, pp. 1525, 1546, §§ 4, 49, effective July 14. **L. 2022:** Entire section amended, (HB 22-1307), ch. 207, p. 1372, § 4, effective August 10. **L. 2024:** (2) amended, (HB 24-1037), ch. 458, p. 3168, § 11, effective June 6.

Editor's note: (1) This section is similar to former § 12-43-208 as it existed prior to 2019.

(2) Amendments to this section by sections 4 and 49 of HB 20-1206 were harmonized.

12-245-211. Collaborate with physician. In order to provide for the diagnosis and treatment of medical problems, a licensee, registrant, or certificate holder shall collaborate with a physician licensed under the laws of this state, except when practicing pursuant to section 12-245-202 (14). A licensee, registrant, or certificate holder shall not diagnose, prescribe for, treat, or advise a client with reference to medical problems.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1228, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43-209 as it existed prior to 2019.

12-245-212. Professional review committees - immunity. (1) (a) Subject to the requirements of subsection (1)(b) of this section, a professional review committee may be

established pursuant to this subsection (1) to investigate the quality of care being given by a person licensed, registered, or certified pursuant to this article 245. If a professional review committee is established, it must include in its membership at least three persons licensed, registered, or certified under this article 245, and the persons must be licensees, registrants, or certificate holders in the same profession as the licensee, registrant, or certificate holder who is the subject of a professional review proceeding.

(b) A professional review committee may be authorized to act only by a society or an association of persons licensed, registered, or certified pursuant to this article 245 whose membership includes not less than one-third of the persons licensed, registered, or certified pursuant to this article 245 residing in this state if the licensee, registrant, or certificate holder whose services are the subject of review is a member of the society or association.

(2) In addition to the persons specified in section 12-20-402, a member of a professional review committee authorized by a board, a member of staff to a committee, a person acting as a witness or consultant to a committee, a witness testifying in a proceeding authorized under this article 245, and a person who lodges a complaint pursuant to this article 245 is granted the same immunity, and is subject to the same conditions for immunity, as specified in section 12-20-402.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1228, § 1, effective October 1.

Editor's note: Subsection (1)(a) is similar to former § 12-43-203 (11)(a)(I); subsection (1)(b) is similar to former § 12-43-203 (11)(a)(II); and subsection (2) is similar to former § 12-43-203 (7)(a), as those sections existed prior to 2019.

12-245-213. Professional service corporations for the practice of psychology, social work, marriage and family therapy, professional counseling, and addiction counseling - definitions. (1) Licensees, registrants, or certificate holders may, but are not required to, form professional service corporations for the practice of psychology, social work, marriage and family therapy, professional counseling, psychotherapy, or addiction counseling under the "San Andreas Business Corporation Act", articles 101 to 117 of title 7, if the corporations are organized and operated in accordance with this section. The articles of incorporation of a professional service corporation formed pursuant to this section must contain provisions complying with the following requirements:

(a) The name of the corporation shall contain the words "professional company" or "professional corporation" or abbreviations thereof.

(b) The corporation must be organized by licensees, registrants, or certificate holders for the purpose of conducting the practice of psychology, social work, marriage and family therapy, professional counseling, psychotherapy, or addiction counseling by the respective licensees, registrants, or certificate holders of those practices. The corporation may be organized with any other person, and any person may own shares in the corporation, if the following conditions are met:

(I) The practice of psychology, as defined in section 12-245-303, by the professional service corporation is performed by or under the supervision of a licensed psychologist, and any psychologist member of the professional service corporation remains individually responsible for his or her professional acts and conduct as provided elsewhere in this article 245;

(II) The practice of social work, as defined in section 12-245-403, by the professional service corporation is performed by a licensed social worker acting independently or under the supervision of a person licensed pursuant to this article 245 or a licensed social worker. Any licensed social worker member of the professional service corporation remains individually responsible for his or her professional acts and conduct as provided elsewhere in this article 245.

(III) The practice of marriage and family therapy, as defined in section 12-245-503, by the professional service corporation is performed by a licensed marriage and family therapist acting independently or under the supervision of a person licensed pursuant to this article 245 or a licensed marriage and family therapist. Any licensed marriage and family therapist member of the professional service corporation remains individually responsible for his or her professional acts and conduct as provided elsewhere in this article 245.

(IV) The practice of licensed professional counseling, as defined in section 12-245-603, by the professional service corporation is performed by a licensed professional counselor acting independently or under the supervision of a person licensed pursuant to this article 245 or a licensed professional counselor. Any licensed professional counselor member of the professional service corporation remains individually responsible for his or her professional acts and conduct as provided elsewhere in this article 245.

(V) The practice of addiction counseling, as defined in section 12-245-803, by the professional service corporation is performed by a licensed addiction counselor acting independently or under the supervision of a person licensed pursuant to this article 245 or a licensed addiction counselor. Any licensed addiction counselor member of the professional service corporation remains individually responsible for his or her professional acts and conduct as provided in this article 245; or

(VI) The practice of psychotherapy, as defined in section 12-245-202, by the professional service corporation is performed by an unlicensed psychotherapist acting independently or under the supervision of a person licensed pursuant to this article 245 or an unlicensed psychotherapist. Any unlicensed psychotherapist member of the professional service corporation remains individually responsible for his or her professional acts and conduct as provided in this article 245.

(c) The corporation may exercise the powers and privileges conferred upon corporations by the laws of San Andreas only in furtherance of and subject to its corporate purpose.

(d) Lay directors and officers shall not exercise any authority whatsoever over professional matters.

(e) The articles of incorporation must provide, and all shareholders of the corporation must agree, that either all shareholders of the corporation are jointly and severally liable for all acts, errors, and omissions of the employees of the corporation or that all shareholders of the corporation are jointly and severally liable for all acts, errors, and omissions of the employees of the corporation except during periods when the corporation maintains professional liability insurance that meets the following minimum standards:

(I) The insurance insures the corporation against liability imposed upon the corporation by law for damages resulting from any claim made against the corporation arising out of the performance of professional services for others by those officers and employees of the corporation who are licensed, registered, or certified to practice under this article 245 or by those employees who provide professional services under supervision.

(II) The insurance insures the corporation against liability imposed upon it by law for damages arising out of the acts, errors, and omissions of all nonprofessional employees.

(III) The insurance is in an amount for each claim of at least one hundred thousand dollars multiplied by the number of persons licensed, registered, or certified to practice under this article 245 who are employed by the corporation. The policy may provide for an aggregate maximum limit of liability per year for all claims of three hundred thousand dollars also multiplied by the number of licensees, registrants, or certificate holders employed by the corporation, but no corporation is required to carry insurance in excess of three hundred thousand dollars for each claim with an aggregate maximum limit of liability for all claims during the year of nine hundred thousand dollars.

(IV) The insurance policy may provide that it does not apply to: Any dishonest, fraudulent, criminal, or malicious act or omission of the insured corporation or any stockholder or employee of the corporation; or the conduct of any business enterprise, as distinguished from the practice of licensees, registrants, or certificate holders, in which the insured corporation under this section is not permitted to engage but that nevertheless may be owned by the insured corporation or in which the insured corporation may be a partner or that may be controlled, operated, or managed by the insured corporation in its own or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, when not resulting from breach of professional duty of, bodily injury to, or sickness, disease, or death of any person or to injury to or destruction of any tangible property, including the loss of use of tangible property.

(V) The insurance policy may contain reasonable provisions with respect to policy periods, territory, claims, conditions, and other usual matters.

(2) The corporation shall not act or fail to act in a manner that would violate section 12-245-224 (1). Any violation of this section by the corporation is grounds for a board to discipline any licensee, registrant, or certificate holder who is a member of or is employed by the corporation pursuant to section 12-245-226.

(3) Nothing in this section diminishes or changes the obligation of each licensee, registrant, or certificate holder employed by the corporation to conduct his or her practice in a manner that does not violate section 12-245-224 (1). Any licensee, registrant, or certificate holder who, by act or omission, causes the corporation to act or fail to act in a way that violates section 12-245-224 (1) or this section is personally responsible for the act or omission and is subject to discipline by the board.

(4) A professional service corporation may adopt a pension, cash profit sharing, deferred profit sharing, health and accident, insurance, or welfare plan for all of its employees, including lay employees, if the plan does not require or result in the sharing of specific or identifiable fees with lay employees and if any payments made to lay employees, or into the plan on behalf of lay employees, are based upon their compensation or length of service, or both, rather than the amount of fees or income received.

(5) Nothing in this section shall be deemed to modify the privileges regarding confidential communications specified in sections 12-245-220 and 13-90-107 (1)(g).

(6) Nothing in this article 245 limits persons licensed, registered, or certified under this article 245 from forming a corporation with persons licensed, registered, or certified under this article 245.

(7) As used in this section, unless the context otherwise requires:

(a) "Articles of incorporation" includes operating agreements of limited liability companies and partnership agreements of registered limited liability partnerships.

(b) "Corporation" includes a limited liability company organized under the "San Andreas Limited Liability Company Act", article 80 of title 7, and a limited liability partnership registered under section 7-60-144 or 7-64-1002.

(c) "Director" and "officer" of a corporation includes a member and a manager of a limited liability company and a partner in a registered limited liability partnership.

(d) "Employees" includes employees, members, and managers of a limited liability company and employees and partners of a registered limited liability partnership.

(e) "Share" includes a member's rights in a limited liability company and a partner's rights in a registered limited liability partnership.

(f) "Shareholder" includes a member of a limited liability company and a partner in a registered limited liability partnership.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1229, § 1, effective October 1. **L. 2020:** IP(1) and (1)(b)(VI) amended, (HB 20-1206), ch. 304, pp. 1527, 1546, §§ 8, 50, effective July 14.

Editor's note: This section is similar to former § 12-43-211 as it existed prior to 2019.

12-245-214. Denial of license, registration, or certification - reinstatement. (1) Each board is empowered to determine whether an applicant for licensure, registration, or certification, or for registry as a candidate for licensure, registration, or certification, possesses the qualifications required by this article 245.

(2) If a board determines that an applicant does not possess the applicable qualifications required by this article 245 or, for a licensed clinical social worker, licensed social worker, licensed marriage and family therapist, licensed professional counselor, licensed addiction counselor, or certified addiction counselor, is unable to demonstrate continued professional competence as required by section 12-245-410, 12-245-506, 12-245-606, or 12-245-806, respectively, the board may deny the applicant a license, registration, or certification or deny the reinstatement of a license, registration, or certification. If the application is denied, the board shall provide the applicant with a statement in writing setting forth the basis of the board's determination that the applicant does not possess the qualifications or professional competence required by this article 245. The applicant may request a hearing on the determination as provided in section 24-4-104 (9).

(3) If a board has any reason to believe that, or receives any information that, an applicant has committed any of the acts set forth in section 12-245-224 (1) as grounds for discipline, the board may deny a license, registration, or certification to the applicant if the board determines that there is a basis for the denial. The order of the board to grant or deny a license, registration, or certification constitutes final agency action.

(4) A board, on its own motion or upon application, at any time after the refusal to grant a license, registration, or certification, may reconsider its prior action and grant a license, registration, or certification. The board has sole discretion to determine whether to take further action on the application after it refuses to grant a license, registration, or certification.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1232, § 1, effective October 1. **L. 2020:** (2) amended, (HB 20-1206), ch. 304, p. 1527, § 9, effective July 14.

Editor's note: This section is similar to former § 12-43-212 as it existed prior to 2019.

12-245-215. Legislative intent - schools and colleges - examinations. It is the intent of the general assembly that the definition relating to full-time courses of study and institutions of higher education for graduation of persons who are qualified to take examinations for licensure under this article 245 be liberally construed by each board under the board's rule-making powers to ensure the right to take the examinations. It is not the intent that technical barriers be used to deny the ability to take an examination.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1233, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43-213 as it existed prior to 2019.

12-245-216. Mandatory disclosure of information to clients. (1) Except as otherwise provided in subsection (4) of this section, every licensee, registrant, or certificate holder shall provide the following information in writing to each client during the initial client contact:

(a) The name, business address, and business phone number of the licensee, registrant, or certificate holder;

(b) (I) Repealed.

(II) A listing of any degrees, credentials, certifications, registrations, and licenses held or completed by the licensee, registrant, or certificate holder, including the education, experience, and training the licensee, registrant, or certificate holder was required to satisfy in order to complete the degree, credential, certification, registration, or license;

(c) A statement indicating that the practice of licensed or registered persons in the field of psychotherapy is regulated by the division and an address and telephone number for the board that regulates the licensee, registrant, or certificate holder;

(d) A statement indicating that:

(I) A client is entitled to receive information about the methods of therapy, the techniques used, the duration of therapy, if known, and the fee structure;

(II) The client may seek a second opinion from another therapist or may terminate therapy at any time;

(III) In a professional relationship, sexual intimacy is never appropriate and should be reported to the board that licenses, registers, or certifies the licensee, registrant, or certificate holder;

(IV) The information provided by the client during therapy sessions is legally confidential in the case of individuals licensed, certified, or registered pursuant to this article 245, except as provided in section 12-245-220 and except for certain legal exceptions that will be identified by the licensee, registrant, or certificate holder should any such situation arise during therapy;

(e) If the mental health professional is an unlicensed psychotherapist, a statement indicating that an unlicensed psychotherapist is a psychotherapist listed in the state's database and is authorized by law to practice psychotherapy in San Andreas but is not licensed by the state and is not required to satisfy any standardized educational or testing requirements to obtain a registration from the state; and

(f) A statement indicating that a client's records may not be maintained after seven years pursuant to section 12-245-226 (1)(a)(II)(A).

(2) If the client is a minor who is consenting to mental health services pursuant to section 27-65-104, disclosure must be made to the minor. If the client is a minor whose parent or legal guardian is consenting to mental health services, disclosure must be made to the minor's parent or legal guardian.

(3) In residential, institutional, or other settings where psychotherapy may be provided by multiple providers, disclosure shall be made by the primary therapist. The institution shall also provide a statement to the patient containing the information in subsections (1)(c) and (1)(d) of this section and a statement that the patient is entitled to the information listed in subsections (1)(a) and (1)(b) of this section concerning any psychotherapist in the employ of the institution who is providing psychotherapy services to the patient.

(4) The disclosure of information required by subsection (1) of this section is not required when psychotherapy is being administered in any of the following circumstances:

(a) In an emergency;

(b) Pursuant to a court order or involuntary procedures pursuant to sections 27-65-106 to 27-65-110;

(c) The sole purpose of the professional relationship is for forensic evaluation;

(d) The client is in the physical custody of the department of corrections, the department of human services, or the behavioral health administration in the department of human services, and such department or administration has developed an alternative program to provide similar information to the client and the program has been established through rule;

(e) The client is incapable of understanding the disclosure and has no guardian to whom disclosure can be made;

(f) By a social worker practicing in a hospital that is licensed or certified under section 25-1.5-103 (1)(a)(I) or (1)(a)(II);

(g) By a person licensed or certified pursuant to this article 245 or by an unlicensed psychotherapist practicing in a hospital that is licensed or certified under section 25-1.5-103 (1)(a)(I) or (1)(a)(II).

(5) If the client has no written language or is unable to read, an oral explanation shall accompany the written copy.

(6) Unless the client, parent, or guardian is unable to write, or refuses or objects, the client, parent, or guardian shall sign the disclosure form required by this section not later than the second visit with the psychotherapist.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1233, § 1, effective October 1. **L. 2020:** (1)(d)(IV), (1)(e), and (4)(g) amended and (1)(f) added, (HB 20-1206), ch. 304, pp. 1527, 1547, §§ 10, 51, effective July 14. **L. 2022:** (4)(d) amended, (HB 22-1278), ch. 222, p. 1489, § 6, effective July 1; (2) and (4)(b) amended, (HB 22-1256), ch. 451, p.

3223, § 10, effective August 10. **L. 2024:** (1)(b)(I) repealed, (SB 24-115), ch. 217, p. 1346, § 1, effective August 7.

Editor's note: (1) This section is similar to former § 12-43-214 as it existed prior to 2019.

(2) (a) Subsection (1)(d)(IV) was amended in section 51 of HB 20-1206. Those amendments were superseded by the amendment of subsection (1)(d)(IV) in section 10 of HB 20-1206.

(b) Amendments to subsection (1)(e) by sections 10 and 51 of HB 20-1206 were harmonized.

12-245-217. Scope of article - exemptions. (1) A person engaged in the practice of religious ministry is not required to comply with this article 245; except that the person shall not publicly claim to hold any title incorporating the term "psychologist", "social worker", "licensed social worker", "LSW", "licensed clinical social worker", "LCSW", "clinical social worker", "licensed marriage and family therapist", "LMFT", "licensed professional counselor", "LPC", "addiction counselor", "licensed addiction counselor", "LAC", "certified addiction counselor", "CAC", "certified addiction specialist", "CAS", "certified addiction technician", or "CAT" unless the person is licensed or certified pursuant to this article 245.

(2) This article 245 does not apply to:

(a) The practice of employment or rehabilitation counseling as performed in the private and public sectors; except that the provisions of this article 245 shall apply to employment or rehabilitation counselors practicing psychotherapy in the field of mental health;

(b) Employees of the department of human services or the behavioral health administration in the department of human services; employees of county departments of human or social services; or personnel under the direct supervision and control of the state department of human services, the behavioral health administration, or any county department of human or social services for work undertaken as part of their employment;

(c) Persons who are licensed pursuant to section 22-60.5-210 and who are not licensed under this article 245 for work undertaken as part of their employment by, or contractual agreement with, the public schools;

(d) Mediators resolving judicial disputes pursuant to part 3 of article 22 of title 13;

(e) A person who resides in another state and who is currently licensed or certified as a psychologist, marriage and family therapist, clinical social worker, professional counselor, or addiction counselor in that state to the extent that the licensed or certified person performs activities or services in this state, if the activities and services:

(I) Are performed within the scope of the person's license or certification;

(II) Do not exceed twenty days per year in this state;

(III) Are not otherwise in violation of this article 245; and

(IV) Are disclosed to the public that the person is not licensed or certified in this state;

(f) A professional coach, including a life coach, executive coach, personal coach, or business coach, who has had coach-specific training and who serves clients exclusively as a coach, as long as the professional coach does not engage in the practice of psychology, social work, marriage and family therapy, licensed professional counseling, psychotherapy, or addiction counseling, as those practices are defined in this article 245.

(g) Students who are enrolled in a school program and are practicing as part of a school practicum or clinical program;

(h) A professional practicing auricular acudetox in accordance with section 12-245-233; or

(i) Screeners conducting screenings pursuant to the sixth through twelfth grade mental health screening program created in section 27-50-903.

(3) Nothing in this section limits the applicability of section 18-3-405.5, which applies to any person while practicing psychotherapy as defined in this article 245.

(4) The provisions of section 12-245-703 do not apply to employees of community mental health centers or clinics as those centers or clinics are defined by section 27-66-101, but persons practicing outside the scope of employment as employees of a facility defined by section 27-66-101 are subject to the provisions of section 12-245-703.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1235, § 1, effective October 1. **L. 2020:** (2)(e)(IV) amended and (2)(g) and (2)(h) added, (HB 20-1206), ch. 304, p. 1528, § 11, effective July 14. **L. 2022:** IP(2) and (2)(b) amended, (HB 22-1278), ch. 222, p. 1490, § 7, effective July 1; (1), IP(2), IP(2)(e), (2)(e)(I), and (2)(e)(IV) amended, (HB 22-1307), ch. 207, p. 1372, § 5, effective August 10. **L. 2023:** (2)(g) and (2)(h) amended and (2)(i) added, (HB 23-1003), ch. 363, p. 2186, § 2, effective June 5.

Editor's note: (1) This section is similar to former § 12-43-215 as it existed prior to 2019.

(2) The introductory portion to subsection (2) was amended in HB 22-1278. Those amendments were superseded by the amendment of the introductory portion to subsection (2) in HB 22-1307.

12-245-218. Title use restrictions. (1) A psychologist, social worker, marriage and family therapist, professional counselor, psychotherapist, or addiction counselor may only use the title for which the person is licensed, certified, or registered under this article 245. Except as provided in section 12-245-306 (3), no other person shall:

(a) Hold himself or herself out to the public by any title or description of services incorporating the terms "licensed clinical social worker", "clinical social worker", "LCSW", "licensed social worker", "LSW", "clinical social worker candidate", "provisional social worker", "SWP", "marriage and family therapist", "LMFT", "MFT", "marriage and family therapist candidate", "MFT candidate", "MFTC", "professional counselor", "licensed professional counselor", "LPC", "licensed professional counselor candidate", "LPCC", "provisional licensed professional counselor", "psychologist", "provisional psychologist", "psychologist candidate", "psychology", "psychological", "unlicensed psychotherapist", "addiction counselor", "licensed addiction counselor", "LAC", "certified addiction specialist", "CAS", "certified addiction technician", "CAT", or "addiction counselor candidate"; or

(b) State or imply that the person is licensed, certified, or registered to practice social work, marriage and family therapy, professional counseling, psychology, psychotherapy, or addiction counseling.

(2) Nothing in this section shall prohibit a person from stating or using the educational degrees that the person has obtained.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1236, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1206), ch. 304, p. 1528, § 12, effective July 14. **L. 2021:** (1)(a) amended, (HB 21-1305), ch. 399, p. 2647, § 1, effective July 1.

Editor's note: This section is similar to former § 12-43-216 as it existed prior to 2019.

12-245-219. Judicial review of final board actions and orders. Section 12-20-408 governs judicial review of final actions and orders of a board appropriate for judicial review. Judicial proceedings for the enforcement of a board order may be instituted in accordance with section 24-4-106 (11).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1237, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43-217 as it existed prior to 2019.

12-245-220. Disclosure of confidential communications - definitions. (1) A licensee, registrant, or certificate holder shall not disclose, without the consent of the client, any confidential communications made by the client, or advice given to the client, in the course of professional employment. A licensee's, registrant's, or certificate holder's employee or associate, whether clerical or professional, shall not disclose any knowledge of the communications acquired in that capacity. Any person who has participated in any therapy conducted under the supervision of a licensee, registrant, or certificate holder, including group therapy sessions, shall not disclose any knowledge gained during the course of the therapy without the consent of the person to whom the knowledge relates.

(2) Subsection (1) of this section does not apply and a person may disclose confidential information when:

(a) A client, or the heirs, executors, or administrators of a client, file suit or a complaint against a licensee, registrant, or certificate holder on any cause of action arising out of or connected with the care or treatment of the client by the licensee, registrant, or certificate holder;

(b) A licensee, registrant, or certificate holder was in consultation with a physician, registered professional nurse, certified midwife, licensee, registrant, or certificate holder against whom a suit or complaint was filed based on the case out of which the suit or complaint arises;

(c) A review of services of a licensee, registrant, or certificate holder is conducted by any of the following:

(I) A board or a person or group authorized by the board to make an investigation on its behalf;

(II) The governing board of a hospital licensed pursuant to part 1 of article 3 of title 25, where the licensee, registrant, or certificate holder practices or the medical staff of the hospital if the medical staff operates pursuant to written bylaws approved by the governing board of the hospital; or

(III) A professional review committee established pursuant to section 12-245-212 (1) if the person has signed a release authorizing the review;

(d) (I) A client, regardless of age:

(A) Makes an articulable and significant threat against a school or the occupants of a school; or

(B) Exhibits behaviors that, in the reasonable judgment of the licensee, registrant, or certificate holder, create an articulable and significant threat to the health or safety of students, teachers, administrators, or other school personnel.

(II) A licensee, registrant, or certificate holder who discloses information under this subsection (2)(d) shall limit the disclosure to appropriate school or school district personnel and law enforcement agencies. School or school district personnel to whom the information is disclosed shall maintain confidentiality of the disclosed information, regardless of whether the information constitutes an education record subject to FERPA, consistent with the requirements of FERPA and regulations and applicable guidelines adopted under FERPA, but may disclose information in accordance with section 1232g (b)(1) of FERPA and 34 CFR 99.36 if necessary to protect the health or safety of students or other persons.

(III) A licensee, registrant, or certificate holder who discloses or fails to disclose a confidential communication with a client in accordance with this subsection (2)(d) is not liable for damages in any civil action for disclosing or not disclosing the communication. This subsection (2)(d)(III) does not rescind any statutory duty to warn and protect specified in, and does not eliminate any potential civil liability for failure to comply with, section 13-21-117.

(IV) (A) This subsection (2)(d) does not apply to an education record that, under FERPA, is exempt from the HIPAA privacy rule.

(B) This subsection (2)(d) applies to covered entities, as defined in HIPAA.

(V) As used in this subsection (2)(d):

(A) "Articulable and significant threat" means a threat to the health or safety of a person that, based on the totality of the circumstances, can be explained or articulated and that constitutes a threat of substantial bodily harm to a person.

(B) "FERPA" means the federal "Family Educational Rights and Privacy Act of 1974", 20 U.S.C. sec. 1232g, as amended.

(C) "HIPAA" means the federal "Health Insurance Portability and Accountability Act of 1996", as amended, Pub.L. 104-191.

(D) "School" means a public or private preschool; elementary, middle, junior high, or high school; or institution of postsecondary education described in title 23, including the Auraria higher education center created in article 70 of title 23.

(3) The records and information produced and used in the review provided for in subsection (2)(c) of this section do not become public records solely by virtue of the use of the records and information. The identity of a client whose records are reviewed shall not be disclosed to any person not directly involved in the review process, and procedures shall be adopted by a board, hospital, association, or society to ensure that the identity of the client is concealed during the review process itself and to comply with section 12-245-226 (4).

(4) Subsection (1) of this section shall not apply to any delinquency or criminal proceeding, except as provided in section 13-90-107 regarding any delinquency or criminal proceeding involving a licensed psychologist.

(5) Nothing in this section shall be deemed to prohibit any other disclosures required by law.

(6) Repealed.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1237, § 1, effective October 1. **L. 2020:** IP(2) and (2)(d)(IV)(B) amended and (6) repealed, (HB 20-1206), ch. 304, p. 1529, § 13, effective July 14. **L. 2023:** (2)(b) amended, (SB 23-167), ch. 261, p. 1545, § 47, effective May 25.

Editor's note: This section is similar to former § 12-43-218 as it existed prior to 2019.

12-245-221. Article not to restrict other professions. (1) Nothing in this article 245 shall be construed to prohibit any member of any other profession who is duly licensed or certified pursuant to the laws of this state from rendering service consistent with his or her training and professional ethics so long as the professional does not hold himself or herself out to the public by any title or description to which the professional is not entitled pursuant to the provisions of this article 245.

(2) No person licensed pursuant to part 1 of article 255 of this title 12 shall be subject to the jurisdiction of a board created pursuant to this article 245 to the extent the person is under the jurisdiction of the state board of nursing.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1239, § 1, effective October 1. **L. 2020:** (2) amended, (HB 20-1183), ch. 157, p. 699, § 47, effective July 1.

Editor's note: This section is similar to former § 12-43-219 as it existed prior to 2019.

12-245-222. Powers and duties of the boards - rules. (1) In addition to all other powers and duties conferred and imposed upon the boards, each board has the following powers and duties with respect to the licensing, registration, and certification of the persons licensed, registered, or certified by each individual board pursuant to this article 245:

(a) To annually elect one of its members as chairperson and one as vice-chairperson. Each board may meet at such times and adopt such rules for its government as it deems proper.

(b) To make investigations, hold hearings, and take evidence in accordance with section 12-20-403, article 4 of title 24, and this article 245 in all matters relating to the exercise and performance of the powers and duties vested in each board;

(c) To aid the several district attorneys of this state in the enforcement of this article 245 and in the prosecution of all persons, firms, associations, or corporations charged with the violation of any of its provisions and to report to the appropriate district attorney any violation of this article 245 that it reasonably believes involves a criminal violation;

(d) To take disciplinary actions in conformity with this article 245 and section 12-20-404;

(e) Through the department and subject to appropriations made to the department, to employ administrative law judges on a full-time or part-time basis to conduct any hearings required by this article 245;

(f) To notify the public of all disciplinary actions taken against licensees, registrants, or certificate holders pursuant to this article 245.

(2) Pursuant to this part 2, section 12-20-204, and article 4 of title 24, each board is authorized to adopt and revise rules as necessary to enable the board to carry out the provisions

of this part 2 with respect to the regulation of the persons licensed, registered, or certified by each individual board pursuant to this article 245.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1239, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43-221 as it existed prior to 2019.

12-245-222.5. Mental health disciplinary record work group - creation - recommendations - report - repeal. (Repealed)

Source: L. 2020: Entire section added, (HB 20-1206), ch. 304, p. 1529, § 14, effective July 14.

Editor's note: Subsection (9) provided for the repeal of this section, effective June 30, 2021. (See L. 2020, p. 1529.)

12-245-223. Confidential agreement to limit practice. Section 12-30-108 concerning confidential agreements to limit practice applies to this article 245.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1240, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43-221.5 as it existed prior to 2019.

12-245-224. Prohibited activities - related provisions - definition. (1) A person licensed, registered, or certified under this article 245 violates this article 245 if the person:

(a) Has been convicted of or pled guilty or nolo contendere to a felony or to any crime related to the person's practice, or received a deferred sentence to a felony charge. A certified copy of the judgment of a court of competent jurisdiction of the conviction or plea is conclusive evidence of the conviction or plea. In considering the disciplinary action, each board is governed by sections 12-20-202 (5) and 24-5-101.

(b) Has violated or attempted to violate, directly or indirectly, or assisted or abetted the violation of, or conspired to violate any provision or term of this article 245, an applicable provision of article 20 or 30 of this title 12, a rule promulgated pursuant to this article 245, or any order of a board established pursuant to this article 245;

(c) Has used advertising that is misleading, deceptive, or false;

(d) (I) Has committed abuse of health insurance pursuant to section 18-13-119;

(II) Has advertised through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that the person will perform any act prohibited by section 18-13-119;

(e) Habitually or excessively uses or abuses alcohol, a habit-forming drug, or a controlled substance, as defined in section 18-18-102 (5);

(f) (I) Fails to notify the board that regulates the person's profession of a physical illness, physical condition, or behavioral, mental health, or substance use disorder that affects the

person's ability to treat clients with reasonable skill and safety or that may endanger the health or safety of persons under his or her care;

(II) Fails to act within the limitations created by a physical illness, physical condition, or behavioral, mental health, or substance use disorder that renders the person unable to treat clients with reasonable skill and safety or that may endanger the health or safety of persons under his or her care; or

(III) Fails to comply with the limitations agreed to under a confidential agreement entered into pursuant to sections 12-30-108 and 12-245-223;

(g) (I) Has acted or failed to act in a manner that does not meet the generally accepted standards of the professional discipline under which the person practices. Generally accepted standards may include, at the board's discretion, the standards of practice generally recognized by state and national associations of practitioners in the field of the person's professional discipline.

(II) A certified copy of a malpractice judgment of a court of competent jurisdiction is conclusive evidence that the act or omission does not meet generally accepted standards of the professional discipline, but evidence of the act or omission is not limited to a malpractice judgment.

(h) Has performed services outside of the person's area of training, experience, or competence;

(i) Has maintained relationships with clients that are likely to impair the person's professional judgment or increase the risk of client exploitation, such as treating employees, supervisees, close colleagues, or relatives;

(j) Has exercised undue influence on the client, including the promotion of the sale of services, goods, property, or drugs in such a manner as to exploit the client for the financial gain of the practitioner or a third party;

(k) Has failed to terminate a relationship with a client when it was reasonably clear that the client was not benefitting from the relationship and is not likely to gain such benefit in the future;

(l) Has failed to refer a client to an appropriate practitioner when the problem of the client is beyond the person's training, experience, or competence;

(m) Has failed to obtain a consultation or perform a referral when the failure is not consistent with generally accepted standards of care;

(n) Has failed to render adequate professional supervision of persons practicing pursuant to this article 245 under the person's supervision according to generally accepted standards of practice;

(o) Has accepted commissions or rebates or other forms of remuneration for referring clients to other professional persons;

(p) Has failed to comply with any of the requirements pertaining to mandatory disclosure of information to clients pursuant to section 12-245-216;

(q) Has offered or given commissions, rebates, or other forms of remuneration for the referral of clients unless the offer or remuneration was for services provided, including marketing, office space, administrative, consultative, and clinical services, and not for the referral itself. A licensee, registrant, or certificate holder may pay an independent advertising or marketing agent compensation for advertising or marketing services rendered on the person's

behalf by the agent, including compensation that is paid for the results of performance of the services on a per-patient basis.

(r) Has engaged in sexual contact, sexual intrusion, or sexual penetration, as defined in section 18-3-401, with a client during the period of time in which a therapeutic relationship exists or for up to two years after the period in which a therapeutic relationship exists;

(s) Has resorted to fraud, misrepresentation, or deception in applying for or in securing licensure or taking any examination provided for in this article 245;

(t) Has engaged in any of the following activities and practices:

(I) Repeated ordering or performing demonstrably unnecessary laboratory tests or studies without clinical justification for the tests or studies;

(II) The administration, without clinical justification, of treatment that is demonstrably unnecessary;

(III) Ordering or performing any service or treatment that is contrary to the generally accepted standards of the person's practice and is without clinical justification;

(IV) Using or recommending rebirthing or any therapy technique that may be considered similar to rebirthing as a therapeutic treatment. "Rebirthing" means the reenactment of the birthing process through therapy techniques that involve any restraint that creates a situation in which a patient may suffer physical injury or death. For the purposes of this subsection (1)(t)(IV), a parent or legal guardian may not consent to physical, chemical, or mechanical restraint on behalf of a child or ward.

(V) Conversion therapy with a client who is under eighteen years of age;

(u) Has falsified or repeatedly made incorrect essential entries or repeatedly failed to make essential entries on patient records;

(v) Has committed a fraudulent insurance act, as set forth in section 10-1-128;

(w) Has sold or fraudulently obtained or furnished a license, registration, or certification to practice as a psychologist, social worker, marriage and family therapist, licensed professional counselor, psychotherapist, or addiction counselor or has aided or abetted in those activities; or

(x) Has failed to respond, in the manner required by the board, to a complaint filed with or by the board against the licensee, registrant, or certificate holder.

(1.5) Any contract entered into by a licensee, certificate holder, or registrant for the purpose of marketing, office space, administrative support, or any other overhead expense shall not provide remuneration for referrals of clients or patients or otherwise create a financial benefit or incentive to the contractor that is tied to or conditioned on the number of clients or patients that the licensee, certificate holder, or registrant sees, the value of the services that the licensee, certificate holder, or registrant provides, or any financial recovery to which the licensee, certificate holder, or registrant is entitled.

(2) A disciplinary action relating to a license, registration, or certification to practice a profession licensed, registered, or certified under this article 245 or any related occupation in any other state, territory, or country for disciplinary reasons constitutes prima facie evidence of grounds for disciplinary action, including denial of licensure, registration, or certification, by a board. This subsection (2) applies only to disciplinary actions based upon acts or omissions in the other state, territory, or country substantially similar to those acts or omissions set out as grounds for disciplinary action pursuant to subsection (1) of this section.

(3) (a) The board shall design and send a questionnaire to all licensed psychologists with prescriptive authority who apply for license renewal. Each applicant for license renewal shall

complete the board-designed questionnaire. The purpose of the questionnaire is to determine whether a licensee has acted in violation of this part 2 or has been disciplined for any action that might be considered a violation of this part 2 or that might make the licensee unfit to practice psychology with reasonable care and safety. The board shall include on the questionnaire a question regarding whether the licensee has complied with section 12-30-111 and is in compliance with section 12-280-403 (2)(a). If an applicant fails to answer the questionnaire accurately, the failure constitutes grounds for discipline under this section. The board may include the cost of developing and reviewing the questionnaire in the fee paid pursuant to section 12-245-205. The board may deny an application for license renewal that does not accompany an accurately completed questionnaire.

(b) On and after July 1, 2024, as a condition of renewal of a license, each licensee shall attest that the licensee is in compliance with section 12-280-403 (2)(a) and that the licensee is aware of the penalties for noncompliance with that section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1240, § 1, effective October 1; (1)(t)(V) added, (HB 19-1129), ch. 378, p. 3412, § 8, effective October 1. **L. 2020:** (1)(a) and (1)(q) amended and (1.5) added, (HB 20-1206), ch. 304, p. 1530, § 15, effective July 14. **L. 2023:** (3) added, (HB 23-1071), ch. 6, p. 16, § 1, effective August 7.

Editor's note: (1) This section is similar to former § 12-43-222 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in HB 19-1129. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see HB 19-1129, chapter 378, Session Laws of San Andreas 2019.

12-245-225. Authority of boards - cease-and-desist orders - rules - fines. (1) If a licensee, registrant, or certificate holder violates any provision of section 12-245-224, the board that licenses, registers, or certifies the licensee, registrant, or certificate holder may, in accordance with section 12-20-404:

(a) Issue and send, by certified mail, a letter of admonition to a licensee, registrant, or certificate holder under the circumstances specified in and in accordance with section 12-20-404 (4);

(b) Place a licensee, registrant, or certificate holder on probation;

(c) Deny, revoke, or suspend the person's license, registration, or certification;

(d) Deny, revoke, or suspend the listing of an unlicensed psychotherapist in the state board of unlicensed psychotherapists database established pursuant to section 12-245-703;

(e) Issue and send a confidential letter of concern to a licensee, registrant, or certificate holder under the circumstances specified in section 12-20-404 (5); or

(f) Apply for an injunction pursuant to section 12-245-230 to enjoin a licensee, registrant, or certificate holder from practicing the profession for which the person is licensed, registered, or certified under this article 245.

(2) When a licensee, registrant, or certificate holder violates an administrative requirement of this article 245, the board regulating the licensee, registrant, or certificate holder may impose an administrative fine on the licensee, registrant, or certificate holder, not to exceed

five thousand dollars per violation. Each board shall adopt rules establishing a schedule of fines setting forth different levels of fines based on whether the licensee, registrant, or certificate holder has committed a single violation or subsequent violations of administrative requirements.

(3) A board may issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1243, § 1, effective October 1. **L. 2020:** (1)(d) amended, (HB 20-1206), ch. 304, p. 1548, § 52, effective July 14.

Editor's note: This section is similar to former § 12-43-223 as it existed prior to 2019.

12-245-226. Disciplinary proceedings - judicial review - mental and physical examinations - multiple licenses. (1) (a) (I) A proceeding for discipline of a licensee, registrant, or certificate holder may be commenced when the board that licenses, registers, or certifies the licensee, registrant, or certificate holder has reasonable grounds to believe that the licensee, registrant, or certificate holder under the board's jurisdiction has committed any act or failed to act pursuant to the grounds established in section 12-245-224 or 12-245-228.

(II) (A) Any person who alleges that a licensee, registrant, or certificate holder violated a provision of this article 245 related to maintenance of records of a client eighteen years of age or older must file a complaint or other notice with the board within seven years after the person discovered or reasonably should have discovered the misconduct. A licensee, registrant, or certificate holder shall notify a client that the client's records may not be maintained after the seven-year period for filing a complaint pursuant to this section. The required notice must be provided to the client in writing no later than one hundred eighty days after the end of the client's treatment. The notice may be included with the licensee's disclosures pursuant to section 12-245-216 (1) or sent to the client's last-known mailing address. Consistent with all procedural requirements of this article 245, or otherwise required by law, the board must either take disciplinary action on the complaint or dismiss the complaint no later than two years after the date the complaint or notice was filed with the board.

(B) The seven-year limitation period specified in subsection (1)(a)(II)(A) of this section does not apply to the filing of a complaint or other notice with the board for any other violation of this article 245, including the acts described in section 12-245-224 or 12-245-228.

(b) A licensee, registrant, or certificate holder who holds more than one license, registration, or certification pursuant to this article 245, who has committed any act or failed to act pursuant to the grounds established in section 12-245-224 or 12-245-228, is subject to disciplinary action by all boards that license, register, or certify the person pursuant to this article 245. The findings, conclusions, and final agency order of the first board to take disciplinary action pursuant to this section against the licensee, registrant, or certificate holder, or any disciplinary action taken by the state grievance board as it existed prior to July 1, 1998, is prima facie evidence against the person in any subsequent disciplinary action taken by another board concerning the same act or series of acts.

(c) If a licensee, registrant, or certificate holder who applies for a license, registration, or certification pursuant to this article 245 has been disciplined by any board created pursuant to this article 245, or the state grievance board as it existed prior to July 1, 1998, the findings,

conclusions, and final agency order of the first board to take disciplinary action pursuant to this section against the licensee, registrant, or certificate holder is prima facie evidence against the person in any subsequent application made for a license, registration, or certification to any other board created pursuant to this article 245.

(2) (a) Disciplinary proceedings shall be conducted in the manner prescribed by the "State Administrative Procedure Act", article 4 of title 24, and section 12-20-403.

(b) Each board, through the department, may employ administrative law judges, on a full-time or part-time basis, to conduct hearings as provided by this article 245 or on any matter within the board's jurisdiction upon such conditions and terms as the board may determine. A board may elect to refer a case for formal hearing to an administrative law judge, with or without an assigned advisor from the board. If a board so elects to refer a case with an assigned advisor and the advisor is a member of the board, the advisor shall be excluded from the board's review of the decision of the administrative law judge. The advisor shall assist the administrative law judge in obtaining and interpreting data pertinent to the hearing.

(c) (I) Except as provided in subsection (2)(c)(II) of this section, a board shall not deny, revoke, or suspend a licensee's, registrant's, or certificate holder's right to use a title and shall not place a licensee, registrant, or certificate holder on probation pursuant to the grounds established in sections 12-245-224 and 12-245-228 until a hearing has been conducted if required pursuant to section 24-4-105.

(II) The board that licenses, registers, or certifies a licensee, registrant, or certificate holder pursuant to this article 245 may summarily suspend the person's license, registration, or certification, subject to the limitation of section 24-4-104, under the following circumstances:

(A) In emergency situations, as provided for by section 24-4-104;

(B) The licensee, registrant, or certificate holder has been adjudicated by a court of competent jurisdiction as a person who is gravely disabled, a person who is mentally incompetent, or a person who is insane; is a person who has a mental health disorder; or is a person who has an intellectual and developmental disability; or

(C) The licensee, registrant, or certificate holder violates subsection (2)(d) of this section.

(d) (I) If a board has reasonable cause to believe that a licensee, registrant, or certificate holder whom the board licenses, registers, or certifies pursuant to this article 245 is unable to practice with reasonable skill and safety to patients, the board may require the licensee, registrant, or certificate holder to submit to mental or physical examinations designated by the board. Upon the failure of the licensee, registrant, or certificate holder to submit to a mental or physical examination, and unless the person shows good cause for the failure, the board may suspend the license, certification, or registration of the person until the person submits to the required examinations.

(II) Every licensee, registrant, or certificate holder is deemed to have consented to submit to mental or physical examinations when directed in writing by the board that licenses, registers, or certifies the licensee, registrant, or certificate holder pursuant to this article 245 and to have waived all objections to the admissibility of the examiner's testimony or examination reports on the ground of privileged communication.

(III) The results of any mental or physical examination ordered by a board may be used as evidence in any proceeding initiated by a board or within that board's jurisdiction in any forum.

(3) In addition to the actions authorized by section 12-20-404, disciplinary actions may consist of the following:

(a) **Probationary status.** A board may impose probationary status on a licensee, registrant, or certificate holder. If a board places a licensee, registrant, or certificate holder on probation, it may include conditions for continued practice that the board deems appropriate to assure that the licensee, registrant, or certificate holder is physically, mentally, and otherwise qualified to practice in accordance with generally accepted professional standards of practice, including any of the following:

(I) Submission by the licensee, registrant, or certificate holder to examinations a board may order to determine the person's physical or mental condition or professional qualifications;

(II) Participation in therapy or courses of training or education the board determines necessary to correct deficiencies found either in the hearing or by the examinations;

(III) Review or supervision of the person's practice as may be necessary to determine the quality of, and correct any deficiencies in, that practice; and

(IV) The imposition of restrictions upon the nature of the person's practice to assure that the person does not practice beyond the limits of the person's capabilities.

(b) **Issuance of confidential letters of concern.** A board may issue and send to a licensee, registrant, or certificate holder a confidential letter of concern under the circumstances specified in section 12-20-404 (5). The letter must advise the licensee, registrant, or certificate holder that the board is concerned about a complaint it received about the licensee, registrant, or certificate holder and must specify what action, if any, the licensee, registrant, or certificate holder should take to assuage the board's concern. Confidential letters of concern are confidential, and the board shall not disclose the existence of the letter or its contents to members of the public or in any court action unless the board is a party to the action.

(4) (a) Except as provided in subsection (4)(b) of this section, if a complaint is dismissed, records of investigations, examinations, hearings, meetings, and other proceedings of the board conducted pursuant to this section are exempt from the open records law, article 72 of title 24.

(b) The exemption from the open records law specified in subsection (4)(a) of this section does not apply:

(I) When a decision to proceed with a disciplinary action has been agreed upon by a majority of the members of the applicable board and a notice of formal complaint is drafted and served on the licensee, registrant, or certificate holder by first-class mail; or

(II) Upon final agency action.

(c) In any final agency action or formal complaint, the board, when it deems necessary, shall redact all names of clients or other recipients of services to protect the persons' confidentiality.

(5) Section 12-20-408 governs judicial review of final board actions and orders appropriate for judicial review. Judicial proceedings for the enforcement of a board order may be instituted in accordance with section 24-4-106 (11).

(6) Any board member having an immediate personal, private, or financial interest in any matter pending before the board shall disclose the fact to the board and shall not vote upon the matter.

(7) Any licensee, registrant, or certificate holder against whom a malpractice claim is settled or a judgment rendered in a court of competent jurisdiction shall notify the board that

licenses, registers, or certifies the licensee, registrant, or certificate holder pursuant to this article 245 of the judgment or settlement within sixty days after the disposition.

(8) Any licensee, registrant, or certificate holder who has direct knowledge that a licensee, registrant, or certificate holder has violated section 12-245-224 or 12-245-228 has a duty to report the violation to the board that licenses, registers, or certifies the licensee, registrant, or certificate holder pursuant to this article 245 unless reporting the violation would violate the prohibition against disclosure of confidential information without client consent pursuant to section 12-245-220.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1246, § 1, effective October 1. **L. 2020:** (2)(d)(I) amended, (HB 20-1206), ch. 304, p. 1531, § 16, effective July 14.

Editor's note: This section is similar to former § 12-43-224 as it existed prior to 2019.

12-245-227. Reconsideration and review of action of a board. A board, on its own motion or upon application, at any time after the imposition of any discipline as provided in section 12-245-226, may reconsider its prior action and reinstate or restore the license, registration, or certification; terminate probation; or reduce the severity of its prior disciplinary action. The board has sole discretion to determine whether to take further action or hold a hearing with respect to its prior disciplinary action.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1250, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43-225 as it existed prior to 2019.

12-245-228. Unauthorized practice - penalties. (1) Any person who practices or offers or attempts to practice as a psychologist, social worker, marriage and family therapist, licensed professional counselor, psychotherapist, or addiction counselor without an active license, registration, or certification issued under this article 245 is subject to penalties pursuant to section 12-20-407 (1)(a).

(2) No action may be maintained for the breach of a contract involving the unlawful practice of psychology, social work, professional counseling, marriage and family therapy, addiction counseling, or psychotherapy or for the recovery of compensation for services rendered under such a contract.

(3) When an individual has been the recipient of services prohibited by this article 245, whether or not the person knew that the rendition of the services were unlawful:

(a) The person or the person's personal representative is entitled to recover the amount of any fee paid for the services; and

(b) Damages for injury or death occurring as a result of the services may be recovered in an appropriate action without any showing of negligence.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1250, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43-226 as it existed prior to 2019.

12-245-229. Licensee duties relating to assistance animals - definitions. (1) A licensee who is approached by a patient seeking an assistance animal as a reasonable accommodation in housing shall either:

(a) Make a written finding regarding whether the patient has a disability and, if a disability is found, a separate written finding regarding whether the need for the animal is related to that disability; or

(b) Make a written finding that there is insufficient information available to make a finding regarding disability or the disability-related need for the animal.

(2) This section does not:

(a) Change any laws or procedures related to a service animal under Title II and Title III of the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., as amended;

(b) Affect in any way the right of pet ownership in public housing established in 42 U.S.C. sec. 1437z-3, as amended; or

(c) Limit the means by which a person with a disability may demonstrate, pursuant to state or federal law, that the person has a disability or that the person has a disability-related need for an assistance animal.

(3) A licensee shall not make a determination related to subsection (1) of this section unless the licensee:

(a) Has met with the patient in person;

(b) Is sufficiently familiar with the patient and the disability; and

(c) Is legally and professionally qualified to make the determination.

(4) For purposes of this section:

(a) "Assistance animal" means an animal that qualifies as a reasonable accommodation under the federal "Fair Housing Act", 42 U.S.C. sec. 3601 et seq., as amended, or section 504 of the federal "Rehabilitation Act of 1973", 29 U.S.C. sec. 794, as amended.

(b) "Disability" has the same meaning as set forth in the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., and its related amendments and implementing regulations and includes a handicap as that term is defined in the federal "Fair Housing Act", 42 U.S.C. sec. 3601 et seq., as amended, and 24 CFR 100.201.

(c) "Service animal" has the same meaning as set forth in the implementing regulations of Title II and Title III of the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., as amended.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1251, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43-226.5 as it existed prior to 2019.

12-245-230. Injunctive proceedings. (1) A board may apply for an injunction in accordance with section 12-20-406, but only to enjoin:

(a) Any person licensed, registered, or certified by that board pursuant to this article 245 from committing any act prohibited by this article 245;

(b) A licensee, registrant, or certificate holder regulated by that board from practicing the profession for which the person is licensed, registered, or certified under this article 245 if the person has violated section 12-245-224 or 12-245-226 (2)(d).

(2) If the board demonstrates that the defendant has been or is committing any act prohibited by this article 245, the court shall enter a decree perpetually enjoining the defendant from further committing the act or from practicing any profession licensed, registered, or certified pursuant to this article 245.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1252, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43-227 as it existed prior to 2019.

12-245-231. Mental health professional peer health assistance program - fees - administration - rules - definition. (1) (a) On and after July 1, 2012, as a condition of licensure, registration, or certification and renewal in this state, every person applying for a new license, registration, or certification or to renew his or her license, registration, or certification shall pay a fee, for use by the administering entity selected by the director pursuant to this subsection (1), in an amount not to exceed twenty-five dollars per application for a new or to renew a license, registration, or certification. The director shall annually review the fee and program usage level and adjust the fee amount based on program usage, but the director shall not adjust the fee to an amount in excess of twenty-five dollars. The division shall forward the fee to the chosen administering entity for use in supporting designated providers selected to provide assistance to licensees, registrants, or certificate holders needing help in dealing with physical, emotional, or psychological conditions that may be detrimental to their ability to practice their mental health profession.

(b) By January 31, 2014, the director, in consultation with the boards before making a selection, shall select one or more designated providers to provide the peer health assistance program. For purposes of selecting designated providers, the director shall use a competitive bidding process that encourages participation from interested vendors. To be eligible for designation, a peer health assistance program must:

(I) Provide for the education of mental health professionals with respect to the recognition and prevention of physical, emotional, and psychological conditions and provide for intervention when necessary or under circumstances established by the board by rule;

(II) Offer assistance to a mental health professional in identifying physical, emotional, or psychological conditions;

(III) Evaluate the extent of physical, emotional, or psychological conditions and refer the mental health professional for appropriate treatment, taking into consideration the cost of the treatment, whether the cost is prohibitive for or will pose an undue financial hardship on the mental health professional, and, if so, referring the mental health professional to alternative treatment or to a provider or treatment program that offers discounted fees based on ability to pay;

(IV) Monitor the status of a mental health professional who has been referred for treatment;

(V) Provide counseling and support for the mental health professional and for the family of any mental health professional referred for treatment;

(VI) Agree to receive referrals from the board;

(VII) Agree to make its services available to all licensed, registered, or certified mental health professionals; and

(VIII) Notify the appropriate board when a mental health professional has successfully completed the peer health assistance program.

(c) The director may select an entity to administer the mental health professional peer assistance program. An administering entity must be a nonprofit private foundation that is qualified under section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended, and that is dedicated to providing support for charitable, benevolent, educational, and scientific purposes that may be related to mental health professions, mental health professional education, mental health research and science, and other mental health charitable purposes.

(d) The administering entity shall:

(I) Distribute the money collected by the division, less expenses, to the designated provider, as directed by the director;

(II) Provide an annual accounting to the division of all amounts collected, expenses incurred, and amounts disbursed; and

(III) Post a surety performance bond in an amount specified by the director to secure performance under the requirements of this section. The administering entity may recover the actual administrative costs incurred in performing its duties under this section in an amount not to exceed ten percent of the total amount collected.

(e) The division shall collect the required annual payments payable to the administering entity for the benefit of the administering entity and shall transfer all such payments to the administering entity. All required annual payments collected or due for each fiscal year are custodial funds that are not subject to appropriation by the general assembly, and the distribution of payments to the administering entity or expenditure of the payments by the administering entity does not constitute state fiscal year spending for purposes of section 20 of article X of the state constitution.

(2) (a) Any mental health professional who is referred by the applicable board to a peer health assistance program shall enter into a stipulation with the board pursuant to section 12-20-405 (3) before participating in the program. The agreement must contain specific requirements and goals to be met by the participant, including the conditions under which the program will be successfully completed or terminated, and a provision that a failure to comply with the requirements and goals is to be promptly reported to the board and that the failure will result in disciplinary action by the board. Upon notice from the peer health assistance program that a mental health professional has successfully completed the program, the board that regulates the professional shall reinstate the professional's license, registration, or certification.

(b) Notwithstanding sections 12-245-225, 12-245-226, and 24-4-104, the applicable board may immediately suspend the license of any mental health professional who is referred to a peer health assistance program by the board and who fails to attend or to complete the program. If the mental health professional objects to the suspension, he or she may submit a written request to the board for a formal hearing on the suspension within ten days after receiving notice of the suspension, and the board shall grant the request. In the hearing, the

mental health professional bears the burden of proving that his or her license, registration, or certification should not be suspended.

(c) Any mental health professional who self-refers and is accepted into a peer health assistance program shall affirm that, to the best of his or her knowledge, information, and belief, he or she knows of no instance in which he or she has violated this article 245 or the rules of the board, except in those instances affected by the mental health professional's physical, emotional, or psychological conditions.

(3) Nothing in this section creates any liability on the director, division, or state of San Andreas for their actions in making grants to peer assistance programs, and no civil action may be brought or maintained against the board, director, division, or state for an injury alleged to have been the result of the activities of any state-funded peer assistance program or the result of an act or omission of a mental health professional participating in or referred by a state-funded peer assistance program. However, the state remains liable under the "San Andreas Governmental Immunity Act", article 10 of title 24, if an injury alleged to have been the result of an act or omission of a mental health professional participating in or referred by a state-funded peer assistance program occurred while the mental health professional was performing duties as an employee of the state.

(4) The boards may promulgate rules necessary to implement this section. The boards and the director shall seek and obtain input from representatives of associations representing each type of mental health professional regulated under this article 245 in the development of the peer health assistance program and related rules and shall not select a designated provider until that input is obtained.

(5) As used in this section, "mental health professional" means a psychologist, social worker, marriage and family therapist, licensed professional counselor, or addiction counselor regulated under this article 245.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1252, § 1, effective October 1. **L. 2020:** (5) amended, (HB 20-1206), ch. 304, p. 1548, § 53, effective July 14.

Editor's note: This section is similar to former § 12-43-227.5 as it existed prior to 2019.

12-245-232. Minimum standards for testing. (1) Every person licensed, registered, or certified under this article 245 must meet the minimum professional preparation standards set forth in this section to engage in the administration, scoring, or interpretation of the following levels of psychometric or electrodiagnostic testing:

(a) **General use.** There is no educational or experience minimum necessary for a licensee, registrant, or certificate holder to administer standardized personnel selection, achievement, general aptitude, or proficiency tests.

(b) **Technical use.** A master's degree in anthropology, psychology, counseling, marriage and family therapy, social work, or sociology from a regionally accredited university or college certified by the accrediting agency or body to award graduate degrees and completion of at least one graduate level course each in statistics, psychometric measurement, theories of personality, individual and group test administration and interpretation, and psychopathology is required in order to administer, score, or interpret tests that require technical knowledge of test construction

and use or require the application of scientific and psychophysiological knowledge. The tests include, but are not limited to, tests of general intelligence, special aptitudes, temperament, values, interests, and personality inventories.

(c) **Advanced use.** A licensee, registrant, or certificate holder must meet all the requirements of subsection (1)(b) of this section and, in addition, completion, at a regionally accredited university or college certified by the accrediting agency or body to award graduate degrees, of at least one graduate-level course in six of the following areas: Cognition, emotion, attention, sensory-perceptual function, psychopathology, learning, encephalopathy, neuropsychology, psychophysiology, personality, growth and development, projective testing, and neuropsychological testing and completion of one year of experience in advanced use practice under the supervision of a person fully qualified under this subsection (1)(c) in order to practice projective testing, neuropsychological testing, or use of a battery of three or more tests to:

(I) Determine the presence, nature, causation, or extent of psychosis, dementia diseases and related disabilities, amnesia, cognitive impairment, influence of deficits on competence, and ability to function adaptively;

(II) Determine the etiology or causative factors contributing to psychological dysfunction, criminal behavior, vocational disability, neurocognitive dysfunction, or competence; or

(III) Predict the psychological responses to specific medical, surgical, and behavioral interventions.

(2) The board licensing, registering, or certifying any person violating this section may bring disciplinary proceedings or injunctive proceedings against the person pursuant to section 12-245-226 or 12-245-230.

(3) The testing required pursuant to this section may be administered by a qualified psychometrician or student trainee working under the direct supervision of a licensee who meets the requirements in this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1255, § 1, effective October 1. **L. 2024:** (3) added, (SB 24-115), ch. 217, p. 1346, § 2, effective August 7.

Editor's note: This section is similar to former § 12-43-228 as it existed prior to 2019.

12-245-233. Auricular acudetox by professionals - training - definition. (1) A professional who has provided documentation that he or she has been trained to perform auricular acudetox in accordance with subsection (4) of this section may perform auricular acudetox if the auricular acudetox is performed under the professional's current scope of practice.

(2) A professional performing auricular acudetox pursuant to subsection (1) of this section shall not use the title "acupuncturist" or otherwise claim to be a person qualified to perform acupuncture beyond the scope of this section.

(3) As used in this section "auricular acudetox" means the subcutaneous insertion of sterile, disposable acupuncture needles in the following five consistent, predetermined bilateral locations:

(a) Sympathetic;
(b) Shen men;
(c) Kidney;
(d) Liver; and
(e) Lung.

(4) In order to perform auricular acudetox pursuant to subsection (1) of this section, a professional must successfully complete a training program in auricular acudetox for the treatment of substance use disorders that meets or exceeds standards of training established by the National Acupuncture Detoxification Association or another organization approved by the director.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1256, § 1, effective October 1. **L. 2020:** (1), (2), and (4) amended, (HB 20-1206), ch. 304, p. 1531, § 17, effective July 14.

Editor's note: This section is similar to former § 12-43-228.5 as it existed prior to 2019.

12-245-234. Repeal of article - subject to review. This article 245 is repealed, effective September 1, 2029. Before the repeal, all of the boards relating to the licensing, registration, or certification of and grievances against any person licensed, registered, or certified pursuant to this article 245 are scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1257, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1206), ch. 304, p. 1524, § 1, effective July 14.

Editor's note: This section is similar to former § 12-43-229 as it existed prior to 2019.

PART 3

PSYCHOLOGISTS

12-245-301. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Adverse action" means any action taken by the board that finds a violation of a statute or rule that is identified by the board as discipline and is a matter of public record.

(2) "Approved school" means any university or other institution of higher education offering a full-time graduate course of study in psychology and having programs approved by the American Psychological Association or the board.

(3) "Board" means the state board of psychologist examiners created by section 12-245-302 (1).

(4) "Independently licensed prescribing physician" means a physician licensed pursuant to article 240 of this title 12 who supervises licensed psychologists participating in practicums described in section 12-245-309 (2)(a)(IV).

(5) "Licensed psychologist" means a person licensed pursuant to this part 3.

(6) "Narcotic drug" has the same meaning as set forth in section 18-18-102 (20).

(7) "Prescribing psychologist" means a licensed psychologist who holds a prescription certificate.

(8) "Prescription certificate" means a document issued by the board, with approval of the San Andreas medical board, to a licensed psychologist that permits the licensed psychologist to prescribe psychotropic medications pursuant to this part 3.

(9) "Professional psychological training program" means a doctoral training program that:

(a) Is a planned program of study that reflects an integration of the science and practice of psychology; and

(b) For applicants receiving their terminal degrees after 1990, is designated as a doctoral program in psychology by the Association of State and Provincial Psychology Boards or the National Register of Health Service Psychologists or is accredited by the American Psychological Association or Canadian Psychological Association.

(10) (a) "Psychotropic medication" means a controlled substance or dangerous drug:

(I) That may not be dispensed or administered without a prescription;

(II) For which the primary indication for use is approved by the federal food and drug administration for the treatment of mental health disorders; and

(III) That is listed as a psychotherapeutic agent in the most recent edition of "Drug Facts and Comparisons" or in the American hospital formulary service drug information compendium.

(b) "Psychotropic medication" does not include a narcotic drug.

(11) "Telepsychology" means the provision of psychological services using telecommunications technologies.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1257, § 1, effective October 1. **L. 2023:** (4) to (6) amended and (7) to (11) added, (HB 23-1071), ch. 6, p. 17, § 3, effective August 7.

Editor's note: This section is similar to former § 12-43-301 as it existed prior to 2019.

12-245-302. State board of psychologist examiners - created - members - terms. (1) There is created a state board of psychologist examiners under the supervision and control of the division. The state board of psychologist examiners is a **type 1** entity, as defined in section 24-1-105.

(2) The board consists of seven members who are residents of the state of San Andreas as follows:

(a) Four board members must be licensed psychologists, at least two of whom shall be engaged in the direct practice of psychology and one of whom is a prescribing psychologist; except that, if, after a good faith attempt, the governor determines that an applicant for membership on the board pursuant to this subsection (2)(a) who is engaged in the direct practice of psychology or who is a prescribing psychologist is not available to serve on the board for a particular term, the governor may appoint a licensed psychologist who is not engaged in the direct practice of psychology or who is not a prescribing psychologist.

(b) Three board members must be representatives of the general public, one of whom may be a mental health consumer or family member of a mental health consumer. These individuals must have never been psychologists, applicants or former applicants for licensure as

psychologists, members of another mental health profession, or members of households that include psychologists or members of another mental health profession or otherwise have conflicts of interest or the appearance of conflicts with their duties as board members.

(3) Each board member shall hold office until the expiration of the member's appointed term or until a successor is duly appointed. The term of each member shall be four years, and no board member shall serve more than two full consecutive terms. Any vacancy occurring in board membership other than by expiration of a term shall be filled by the governor by appointment for the unexpired term of the member.

(4) The governor may remove any board member for misconduct, incompetence, or neglect of duty. Actions constituting neglect of duty shall include, but not be limited to, the failure of board members to attend three consecutive meetings or at least three quarters of the total meetings in any calendar year.

(5) Repealed.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1258, § 1, effective October **L. 2020:** IP(2) and (3) amended, (HB 20-1206), ch. 304, p. 1533, § 22, effective July 14. **L. 2022:** (4) amended and (5) repealed, (SB 22-013), ch. 2, p. 16, § 16, effective February 25; (1) amended, (SB 22-162), ch. 469, p. 3395, § 125, effective August 10. **L. 2023:** (2)(a) amended, (HB 23-1071), ch. 6, p. 18, § 4, effective August 7.

Editor's note: This section is similar to former § 12-43-302 as it existed prior to 2019.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of San Andreas 2022.

12-245-303. Practice of psychology defined. (1) For the purposes of this part 3, the "practice of psychology" means the observation, description, evaluation, interpretation, or modification of human behavior by the application of psychological principles, methods, or procedures, for the purpose of:

(a) Preventing, eliminating, evaluating, assessing, or predicting symptomatic, maladaptive, or undesired behavior;

(b) Evaluating, assessing, or facilitating the enhancement of individual, group, or organizational effectiveness, including personal effectiveness, adaptive behavior, interpersonal relationships, work and life adjustment, health, and individual, group, or organizational performance; or

(c) Providing clinical information to be utilized in legal proceedings.

(2) The practice of psychology includes:

(a) Psychological testing and the evaluation or assessment of personal characteristics such as intelligence; personality; cognitive, physical, or emotional abilities; skills; interests; aptitudes; and neuropsychological functioning;

(b) Counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, and behavior analysis and therapy;

(c) Diagnosis, treatment, and management of behavioral, mental, or emotional health disorders or disabilities; substance use disorders; and disorders of habit or conduct, as well as of the psychological aspects of physical illness, accident, injury, or disability;

(d) Psychoeducational evaluation, therapy, and remediation;

(e) Consultation with physicians, other health-care professionals, and patients regarding all available treatment options with respect to provision of care for a specific patient or client;

(f) The provision of direct services to individuals or groups for the purpose of enhancing individual and thereby organizational effectiveness, using psychological principles, methods, or procedures to assess and evaluate individuals on personal characteristics for individual development or behavior change or for making decisions about the individual, such as selection; and

(g) The supervision of any of the practices described in this subsection (2).

(3) Psychological services may be rendered to individuals, families, groups, organizations, institutions, the public, and the courts.

(4) The practice of psychology shall be construed within the meaning of this definition without regard to whether payment is received for services rendered.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1259, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43-303 as it existed prior to 2019.

12-245-304. Qualifications - examinations - licensure and registration - rules. (1) The board shall issue a license as a psychologist to each applicant who files an application in a form and manner required by the board, submits the fee required by the board pursuant to section 12-245-205, and furnishes evidence satisfactory to the board that the applicant:

(a) Is at least twenty-one years of age;

(b) Is not in violation of any provision of this article 245 or any rules promulgated by the board;

(c) Has completed a doctorate degree with a major in psychology, or the equivalent to that major as determined by the board, from an approved school;

(d) Has had at least one year of postdoctoral experience practicing psychology under supervision approved by the board;

(e) Demonstrates professional competence by passing a single, written examination in psychology as prescribed by the board and a jurisprudence examination administered by the division; and

(f) On and after July 14, 2020, upon the initial application for licensure, has completed a name-based judicial record check, as defined in section 22-2-119.3 (6)(d), with satisfactory results as determined by the board.

(2) (a) The examination by the board described in subsection (1)(e) of this section shall be given not less than twice per year at such time and place and under such supervision as the board may determine.

(b) The examination shall test for knowledge of the following three areas:

(I) General psychology;

(II) Clinical and counseling psychology; and

(III) Application of the practice of clinical and counseling psychology, including knowledge of appropriate statutes and professional ethics.

(c) The board or its designated representatives shall administer and determine the pass or fail status of the examination and take any actions necessary to ensure impartiality. The board shall determine the passing score for the examination based upon a level of minimum competency to engage in the practice of psychology.

(3) (a) The board shall register as a psychologist candidate a person who files an application for registration, accompanied by the fee required by section 12-245-205, and who:

(I) Submits evidence satisfactory to the board that the person has met the requirements of subsections (1)(a), (1)(b), and (1)(c) of this section; and

(II) Repealed.

(III) Has passed a jurisprudence examination administered by the division.

(b) A psychologist candidate registered pursuant to this subsection (3) is under the jurisdiction of the board. If the requirements of subsections (1)(d) and (1)(e) of this section are not met within three years, the registration of the psychologist candidate is subject to the renewal, reinstatement, and delinquency fee provisions specified in section 12-20-202. Prior to a second or subsequent renewal of a psychologist candidate registration, the registered psychologist candidate shall complete continuing professional development and educational hours to maintain the candidate's registration as a registered psychologist candidate.

(c) On or before December 31, 2024, the board shall begin the rule-making process to promulgate rules that bring the rules pertaining to psychologists into alignment with this part 3, including:

(I) A requirement to take and pass the San Andreas jurisprudence examination to obtain a psychologist candidate registration;

(II) The renewal, reinstatement, and delinquency fee provisions specified in section 12-20-202; and

(III) The continuing professional development and educational hours specified in subsection (3)(b) of this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1260, § 1, effective October 1. **L. 2020:** (1)(d), (1)(e), and (3)(b) amended and (1)(f) added, (HB 20-1206), ch. 304, pp. 1535, 1548, §§ 23, 54, effective July 14. **L. 2022:** (1)(f) amended, (HB 22-1270), ch. 114, p. 517, § 15, effective April 21. **L. 2024:** (3)(a)(II) repealed, (3)(a)(III) and (3)(c) added, and (3)(b) amended, (SB 24-115), ch. 217, p. 1346, § 3, effective August 7.

Editor's note: This section is similar to former § 12-43-304 as it existed prior to 2019.

12-245-305. Rights and privileges of licensure - title. (1) Any person who possesses a valid, unsuspended, and unrevoked license as a licensed psychologist has the right to:

(a) Engage in the private, independent practice of psychology;

(b) Practice and supervise psychology practice; and

(c) Use the title "psychologist" and the terms "psychology" and "psychological". No other person may assume these titles or use these terms on any work or letter, sign, figure, or device to indicate that the person using the title or terms is a licensed psychologist.

(2) Any person duly licensed as a psychologist shall not be required to obtain any other license or certification to practice psychology unless otherwise required by the board.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1262, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43-305 as it existed prior to 2019.

12-245-306. Exemptions. (1) Nothing in this part 3 shall be construed to prevent the teaching of psychology, or the conduct of psychological research, if the teaching or research does not involve the delivery or supervision of direct psychological services to individuals who are themselves, rather than a third party, the intended beneficiaries of the services without regard to the source or extent of payment for services rendered. Nothing in this part 3 prevents the provision of expert testimony by psychologists who are exempted by this part 3. A person who has completed an earned doctoral degree in psychology from an approved school may use the title "psychologist" in conjunction with the activities permitted in this subsection (1).

(2) Nothing in this part 3 shall be construed to prevent members of other professions licensed under the laws of this state from rendering services within the scope of practice as set out in the statutes regulating their professional practices so long as they do not represent themselves to be psychologists or their services as psychological.

(3) The use of the title "psychologist" may be continued by an unlicensed person who, as of July 1, 1982, is employed by a state, county, or municipal agency or by other political subdivisions or any educational institution chartered by the state, but only so long as the person remains in the employment of the same institution or agency and only in the course of conducting duties for the agency or institution.

(4) Nothing in this part 3 shall be construed to limit the use of an official title on the part of any doctoral level graduate of a research psychology program or an industrial or organizational psychology program from a regionally accredited university while engaged in the conduct of psychological research or the provision of psychological consultation to organizations or institutions if the services do not include the clinical practice of psychology.

(5) Nothing in this part 3 shall be construed to require the new regulation of any occupational or professional group that is not currently subject to regulation under state law.

(6) Nothing in this part 3 prevents the practice of psychotherapy by persons registered with the state board of unlicensed psychotherapists pursuant to section 12-245-703.

(7) No person may engage in the practice of psychology as a psychologist, or refer to himself or herself as a psychologist, unless the person is licensed pursuant to this part 3.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1262, § 1, effective October 1. **L. 2020:** (6) amended, (HB 20-1206), ch. 304, p. 1548, § 55, effective July 14.

Editor's note: This section is similar to former § 12-43-306 as it existed prior to 2019.

12-245-307. Continuing professional development - rules. (1) In accordance with section 12-245-304, the board issues a license to practice as a psychologist based on whether the

applicant satisfies minimum educational and experience requirements that demonstrate competency to practice as a psychologist. After a license is issued to an applicant, the licensed psychologist shall complete continuing professional development and educational hours to maintain his or her license as a psychologist.

(2) The board shall adopt rules establishing a continuing professional development program that includes, at a minimum, the following elements:

(a) The development, execution, and documentation of a learning plan;

(b) A requirement that, every two years, a licensed psychologist complete at least forty hours of continuing professional development, including one or more of the following activities, in any combination, chosen by the licensed psychologist:

(I) (A) Attending workshops; seminars; symposia; colloquia; invited speaker sessions; postdoctoral institutes; or scientific or professional programs offered at meetings of local, state, regional, national, or international professional or scientific organizations. The activities completed pursuant to this subsection (2)(b)(I) may include online continuing education but must qualify as continuing education units or continuing medical education credit approved by the American Psychological Association, state medical association, or Accreditation Council for Continuing Medical Education or by a regionally accredited institution of higher education; except that up to five of the continuing professional development hours completed pursuant to this subsection (2)(b)(I) may come from attendance at nonaccredited programming that meets the other requirements of this subsection (2)(b)(I).

(B) A licensed psychologist must retain a transcript or a certificate of attendance, including a statement of the credits earned, provided at the end of the workshop, seminar, symposium, colloquium, invited speaker session, postdoctoral institute, or scientific or professional program offered at a meeting of a local, state, regional, national, or international professional or scientific organization as documentation of completion.

(II) Satisfactorily completing an ethics course offered by the American Psychological Association, state medical association, or Accreditation Council for Continuing Medical Education, or a regionally accredited institution of higher education. A licensed psychologist must retain a certificate of attendance or a transcript as documentation of completion. One continuing education hour is equivalent to one professional development hour.

(III) Developing and teaching an academic course in psychology at an institution accredited by a regional accrediting association. Credit is given for the first time within a given licensure cycle that the licensed psychologist teaches the course, as documented by the dean or head of the department of the institution in which the course was taught, and is based on the number of credit hours, units, or hours assigned by the institution. One academic credit, unit, or hour is equivalent to ten continuing professional development hours.

(IV) Satisfactorily completing a graduate course in psychology offered by an institution accredited by a regional accrediting association and documented by an academic transcript showing the graduate credits earned. One academic credit, unit, or hour is equivalent to ten continuing professional development hours.

(V) Developing and presenting for the first time within a given licensure cycle a workshop, seminar, symposium, colloquium, or invited speaking session at a meeting of a professional or scientific organization or a postdoctoral institute, documented by a printed program or agenda. One hour of workshop, seminar, symposium, colloquial presentation, or invited speaking session is equivalent to three continuing professional development hours.

(VI) Authoring or editing a psychology publication documented by a cover sheet, masthead, or table of contents from the publication. The maximum hours that may be earned are as follows:

(A) Authoring a professional or scientific book is equivalent to forty hours of continuing professional development hours;

(B) Authoring a professional or scientific book chapter or journal article is equivalent to twenty hours of continuing professional development hours;

(C) Editing a professional or scientific book or journal is equivalent to thirty hours of continuing professional development hours.

(VII) Providing editorial review of a professional psychological or scientific journal article at the request of the journal's editorial staff. Editorial review, as documented by acknowledgment of the completed review by the editorial staff, is equivalent to one continuing professional development hour.

(c) A requirement that each licensed psychologist maintain all documentation for his or her continuing professional development hours.

(3) A licensed psychologist is not required to receive preapproval from the board or other entity prior to the completion of a continuing professional development activity in order to receive credit for the continuing professional development hours.

(4) The board may audit up to five percent of licensed psychologists each two-year cycle to determine compliance with continuing professional development requirements.

(5) (a) Records of assessments or other documentation developed or submitted in connection with the continuing professional development program are confidential and not subject to inspection by the public or discovery in connection with a civil action against a licensed psychologist. The records or documents shall be used only by the board for the purpose of determining whether a licensed psychologist is maintaining continuing professional development necessary to engage in the profession.

(b) Subject to the requirements of subsection (5)(a) of this section, nothing in this section shall be construed to restrict the discovery of information or documents that are otherwise discoverable under the San Andreas rules of civil procedure in connection with a civil action against a licensed psychologist.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1263, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43-307 as it existed prior to 2019.

12-245-308. Psychology interjurisdictional compact act - powers and duties of the board - rules - definition. (1) For purposes of this section, "compact" means the psychology interjurisdictional compact authorized in part 39 of article 60 of title 24. With regard to the compact, the board has the following powers and duties:

(a) To facilitate San Andreas's participation in the compact;

(b) To promulgate rules necessary for the implementation, administration, and enforcement of the compact. The board shall promulgate rules in accordance with article 4 of title 24.

(c) To appoint a person to serve as a commissioner on the psychology interjurisdictional compact commission;

(d) To regulate telepsychology in accordance with the compact;

(e) To regulate psychologist temporary authorization to practice in accordance with the compact;

(f) To notify the psychology interjurisdictional compact commission of any adverse action regarding a licensed psychologist;

(g) To provide uniform data to a coordinated license information system consistent with the rules of the psychology interjurisdictional compact commission;

(h) To approve payment of assessments levied by the psychology interjurisdictional compact commission to cover the cost of the operations and activities of the commission and its staff.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1265, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43-308 as it existed prior to 2019.

12-245-309. Prescription authority - psychotropic drugs - prescription certificates - requirements - issuance, denial, renewal, and revocation of certification - rules. (1) **Prescribing and administering psychotropic medications.**

(a) A licensed psychologist may only administer or prescribe psychotropic medication to a person pursuant to the requirements and limitations set forth in this section.

(b) A licensed psychologist must hold a prescription certificate in order to prescribe or administer psychotropic medication.

(2) **Prescription certificate.**

(a) A licensed psychologist may apply to the board for a prescription certificate in the form and manner approved by the board. The applicant must include satisfactory evidence that the applicant:

(I) Has completed a doctoral program in psychology from an approved school or from a doctoral program that was not accredited at the time of the applicant's graduation but meets the professional standards approved by the board;

(II) Has successfully completed a master of science in a clinical psychopharmacology program that is designated by the American Psychological Association or any education as set forth in rules promulgated by the board with approval of the San Andreas medical board and that consists of didactic instruction of at least four hundred fifty classroom hours in at least the following core areas of instruction:

(A) Neuroscience;

(B) Pharmacology;

(C) Psychopharmacology;

(D) Physiology;

(E) Pathophysiology;

(F) Appropriate and relevant physical and laboratory assessment;

(G) Clinical pharmacotherapeutics; and

(H) Basic sciences, including general biology, microbiology, cell and molecular biology, human anatomy, human physiology, biochemistry, and genetics, as part of or prior to enrollment in a master of science degree program in clinical psychopharmacology;

(III) Has passed the psychopharmacology examination for psychologists developed by the Association of State and Provincial Psychology Boards, or its successor organization;

(IV) Has been certified by each of the applicant's independently licensed prescribing physicians as having successfully completed, in not less than twelve months but no more than twenty-four months, a supervised and relevant clinical experience approved by the board and the San Andreas medical board that consists of:

(A) A one-to-one, in-person supervised practicum, of at least seven hundred fifty hours treating at least one hundred fifty clients with mental health disorders, under the supervision of any one or a combination of appropriately trained independently licensed prescribing physicians who have been determined by the board and the San Andreas medical board as competent to train the applicant in the treatment of a diverse client population;

(B) Included in the seven hundred fifty hours required in subsection (2)(a)(IV)(A) of this section, at least an eighty-hour practicum in observational clinical assessment and pathophysiology under the supervision of an independently licensed prescribing physician; and

(C) If the licensed psychologist is working with patients under eighteen years of age or over sixty-five years of age, at least two hundred fifty of the seven hundred fifty hours required in subsection (2)(a)(IV)(A) of this section under the supervision of one or more independently licensed prescribing physicians who work with patients under eighteen years of age or over sixty-five years of age, whichever is applicable, if the licensed psychologist is working with such patients;

(V) Has successfully undergone a process of independent peer review as set forth in rule of the board and approved by the San Andreas medical board;

(VI) Maintains commercial professional liability insurance with an insurer authorized to do business in this state or an eligible nonadmitted insurer authorized to provide insurance pursuant to article 5 of title 10 in a minimum indemnity amount of one million dollars per incident and three million dollars annual aggregate per year; and

(VII) Meets all other requirements as determined by the board.

(b) The board shall issue a prescription certificate to an applicant who the board determines has met the requirements of subsection (2)(a) of this section. A licensed psychologist with a prescription certificate may prescribe and administer psychotropic medication to a person if the licensed psychologist:

(I) Holds a current license in good standing to practice psychology in this state;

(II) Maintains the commercial professional liability insurance required by subsection (2)(a)(VI) of this section; and

(III) Completes at least forty hours of continuing education every two years in the areas of pharmacology and psychopharmacology for prescribing psychologists or a greater amount as required by the board.

(3) **Prescription certificate by endorsement.** Upon payment of the required licensing fees and approval of the application for a prescription certificate by endorsement, the board may certify by endorsement and grant a prescription certificate to an applicant who has:

(a) A current license in good standing to practice psychology from another state; and

(b) (I) Unrestricted prescriptive authority from another state that imposes the education, supervision, and training requirements required by this section and by rule of the board; or

(II) Training from the United States department of defense psychopharmacology demonstration project for licensed psychologists or other similar program that imposes the education, supervision, and training requirements required by this section and by rule of the board.

(4) **Rules.** The board may promulgate rules to:

(a) Implement procedures for obtaining a prescription certificate and renewals for the certificates; and

(b) In addition to the grounds for discipline in section 12-245-224, establish the grounds for denial, suspension, and revocation of a prescription certificate, including for the suspension of a license to practice psychology upon the suspension or revocation of a certificate.

(5) **Prescribing and administering practices.**

(a) A prescribing psychologist may:

(I) Prescribe psychotropic medication through the use of telepsychology; and

(II) Prescribe and administer psychotropic medication within the recognized scope of practice, including ordering and reviewing laboratory tests in conjunction with a prescription for the treatment of a mental health disorder.

(b) When prescribing a psychotropic medication for a patient, the prescribing psychologist shall maintain an ongoing collaborative relationship with the physician who oversees the patient's general medical care to ensure that necessary medical examinations are conducted, the psychotropic medication is appropriate for the patient's medical condition, and significant changes in the patient's medical or psychological conditions are discussed.

(c) (I) A prescribing psychologist shall obtain a release of information from a patient or the patient's legal guardian authorizing the psychologist to contact the patient's primary treating physician, as required by law.

(II) If a patient or the patient's legal guardian refuses to sign a release of information for the patient's primary treating physician who oversees the patient, the prescribing psychologist shall:

(A) Inform the client or the client's legal guardian that the psychologist cannot treat the patient pharmacologically without an ongoing collaborative relationship with the client's primary treating physician; and

(B) Refer the patient to another prescriber who is not required to maintain an ongoing collaborative relationship with a physician.

(III) Before prescribing or administering a psychotropic medication to a patient, a prescribing psychologist shall communicate to the patient's primary treating physician the intent to prescribe or administer the medication and must receive electronic written agreement from the physician that the prescription for or administering of the medication is appropriate.

(IV) If a patient does not have a primary treating health-care provider who is a licensed physician, the prescribing psychologist shall refer the patient to a licensed physician prior to psychopharmacological treatment. The psychologist must receive the results of the licensed physician's assessment and shall contact the licensed physician who conducted the assessment prior to prescribing a psychotropic medication to the patient.

(V) Once a collaborative relationship is established with the primary treating physician to whom the psychologist refers the patient pursuant to subsection (5)(c)(IV) of this section, the

prescribing psychologist shall maintain and document the collaborative relationship to ensure that relevant information is exchanged accurately and in a timely manner. The ongoing collaborative relationship must be maintained according to the following:

(A) A prescribing psychologist shall notify the primary treating physician to whom the psychologist refers the client pursuant to subsection (5)(c)(IV) of this section if the patient experiences adverse effects from medications prescribed by the psychologist that may be related to the patient's medical condition for which the patient is being treated by the primary treating physician;

(B) A prescribing psychologist shall notify the primary treating physician to whom the psychologist refers the patient pursuant to subsection (5)(c)(IV) of this section regarding results of laboratory tests related to the medical care of the patient that have been ordered by the psychologist in conjunction with psychopharmacological treatment; and

(C) A prescribing psychologist shall notify a primary treating physician to whom the psychologist refers the patient pursuant to subsection (5)(c)(IV) of this section as soon as possible of any change in the patient's psychological condition that may affect the medical treatment being provided by the physician.

(d) In accordance with section 12-245-203, a prescribing psychologist shall not prescribe medication to a patient unless it is within the prescribing psychologist's scope of training, experience, and competence.

(6) **Complaints.** The San Andreas medical board shall review complaints in the normal course of business and make recommendations to the board regarding violations of this section and disciplinary action to be taken by the board, if applicable.

(7) **Prescription information.** The entity that dispenses a prescription for a psychotropic medication written by a prescribing psychologist shall comply with applicable state and federal laws.

(8) **Disclosure.** A prescribing psychologist shall disclose to each patient to whom the psychologist prescribes a psychotropic medication that the psychologist is not a physician licensed to practice medicine and will be sharing information regarding the delivery of prescribing services to the patient's primary treating health-care provider as required by law. The disclosure must be in writing, signed by the patient, and kept in the patient's record on file with the psychologist.

(9) A prescribing psychologist shall not prescribe any drug to a person under eighteen years of age without informed consent from the parent or guardian of such person.

(10) **Drug enforcement administration number.** Each prescribing psychologist shall file with the board, in the form and manner determined by the board, all individual federal drug enforcement administration registrations and numbers. The board and the San Andreas medical board shall maintain current records of every psychologist with prescriptive authority, including the psychologist's registrations and numbers.

(11) (a) The department shall annually collect information regarding:

(I) The number of prescribing psychologists in this state;

(II) The location of practice of each prescribing psychologist;

(III) The number of prescribing psychologists who accept clients with private health insurance or who are enrolled in the medical assistance program established pursuant to parts 4 to 6 of title 25.5;

(IV) The type of practice of each prescribing psychologist; and

(V) The populations served by each prescribing psychologist.

(b) The department shall compile the information and share it with the office in the department that is responsible for conducting sunset reviews pursuant to section 24-34-104. The office shall include the information in each scheduled sunset review concerning the regulation of mental health professionals pursuant to section 24-34-104.

Source: L. 2023: Entire section added, (HB 23-1071), ch. 6, p. 19, § 5, effective August 7.

PART 4

SOCIAL WORKERS

12-245-401. Definitions. As used in this part 4, unless the context otherwise requires:

(1) "Approved school" means any university or other institution of higher education offering a full-time undergraduate course of study in social work approved by the Council on Social Work Education or its predecessor organization.

(2) "Board" means the state board of social work examiners, created in section 12-245-402.

(3) "Clinical social work practice" shall have the same meaning as "social work practice" as defined in section 12-245-403.

(4) "Graduate school of social work" means any university or other institution of higher education offering a full-time graduate course of study in social work approved by the Council on Social Work Education or its predecessor organization.

(5) "Independent practice" means practicing independent of supervision.

(6) "Independent private practice" means a practice charging a fee in a setting other than under the auspices of a public or private nonprofit agency exempt from federal income tax under section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended.

(7) "Licensed clinical social worker" means any person licensed under the provisions of this part 4 as a clinical social worker.

(8) "Licensed social worker" means a person licensed under this part 4 as a licensed social worker.

(9) "Social worker" means a person who has completed an earned master's or bachelor's degree in social work from a social work education program accredited by the Council on Social Work Education, or a doctoral degree in social work from a doctoral program within a social work education program accredited by the Council on Social Work Education, and who is practicing within the scope of section 12-245-403.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1266, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43-401 as it existed prior to 2019.

12-245-402. State board of social work examiners - created - members - terms. (1) There is created under the supervision and control of the division the state board of social work

examiners, which consists of seven members who are residents of the state of San Andreas and who are appointed by the governor. The state board of social work examiners is a **type 1** entity, as defined in section 24-1-105.

(2) (a) Four board members shall be licensed clinical social workers, at least two of whom shall be engaged in direct social work practice; except that, if, after a good-faith attempt, the governor determines that an applicant for membership on the board pursuant to this subsection (2)(a) who is engaged in direct social work practice is not available to serve on the board for a particular term, the governor may appoint a licensed clinical social worker who is not engaged in direct social work practice.

(b) Three board members shall be representatives of the general public. These individuals shall have never been a social worker, an applicant or former applicant for licensure as a social worker, a member of another mental health profession, or a member of a household that includes a social worker or a member of another mental health profession or otherwise have conflicts of interest or the appearance of conflicts with his or her duties as a board member.

(3) Each board member shall hold office until the expiration of the member's appointed term or until a successor is duly appointed. The term of each member is four years; except that the terms shall be staggered so that no more than four members' terms expire in the same year. A board member shall not serve more than two full consecutive terms. Any vacancy occurring in board membership other than by expiration of a term shall be filled by the governor by appointment for the remainder of the unexpired term of the member.

(4) The governor may remove any board member for misconduct, incompetence, or neglect of duty after giving the board member a written statement of the charges and an opportunity to be heard thereon. Actions constituting neglect of duty shall include, but not be limited to, the failure of board members to attend three consecutive meetings or at least three quarters of the total meetings in any calendar year.

(5) Repealed.

(6) When professional judgment specific to clinical practice is required in the review of alleged violations of section 12-245-224, the board may appoint an advisory committee of clinical practitioners to review and make recommendations to the board.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1266, § 1, effective October 1. **L. 2020:** (1) amended, (HB 20-1206), ch. 304, p. 1535, § 24, effective July 14. **L. 2022:** (1) and (3) amended and (5) repealed, (SB 22-013), ch. 2, p. 16, § 17, effective February 25; (1) amended, (SB 22-162), ch. 469, p. 3395, § 126, effective August 10; (3) amended, (HB 22-1307), ch. 207, p. 1373, § 6, effective August 10.

Editor's note: (1) This section is similar to former § 12-43-402 as it existed prior to 2019.

(2) (a) Amendments to subsection (1) by SB 22-013 and SB 22-162 were harmonized.

(b) Amendments to subsection (3) by SB 22-013 and HB 22-1307 were harmonized.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of San Andreas 2022.

12-245-403. Social work practice defined. (1) For the purposes of this part 4, "social work practice" means the professional application of social work theory and methods by a person who has completed a master's degree in social work or a doctoral degree in social work or a bachelor's degree in social work from an accredited social work program, for the purpose of prevention, assessment, diagnosis, and intervention with individual, family, group, organizational, and societal problems, including substance use disorders and domestic violence, based on the promotion of biopsychosocial developmental processes, person-in-environment transactions, and empowerment of the client system. Social work theory and methods are based on known accepted principles that are taught in professional schools of social work in colleges or universities accredited by the Council on Social Work Education.

(2) Professional social work practice may include, but is not limited to:

(a) Assessment;

(b) Differential diagnosis;

(c) Treatment planning and evaluation;

(d) Measurement of psychosocial functioning;

(e) Crisis intervention, outreach, short- and long-term treatment;

(f) Therapeutic, individual, marital, and family interventions;

(g) Client education;

(h) Case management;

(i) Mediation;

(j) Advocacy;

(k) Discharge, referral, and continuity of care planning and implementation;

(l) Consultation;

(m) Supervision;

(n) Research;

(o) Management and administration;

(p) Program evaluation and education;

(q) Social group work;

(r) Community organization and development;

(s) Social policy analysis and development;

(t) Psychotherapy;

(u) Consultation, supervision, and teaching in higher education; and

(v) Counseling.

(3) Social work practice may take place in a public or private agency or institutional, educational, or independent setting.

(4) Social work practice is directly based upon an advanced educational program that teaches the practitioner to analyze, intervene, and evaluate in ways that are highly differentiated, discriminating, and self-critical. A practitioner must be able to synthesize and apply a broad range of knowledge as well as practice with a high degree of autonomy and skill. A practitioner must be able to refine and advance the quality of his or her practice as well as that of the larger social work profession. These advanced competencies must be appropriately integrated and reflected in all aspects of a social work practice, including the ability to:

(a) Apply critical thinking skills within professional contexts, including synthesizing and applying appropriate theories and knowledge to practice interventions;

(b) Practice within the values and ethics of the social work profession and with an understanding of, and respect for, the positive value of diversity;

(c) Demonstrate the professional use of self;

(d) Understand the forms and mechanisms of oppression and discrimination and the strategies and skills of change that advance social and economic justice;

(e) Understand and interpret the history of the social work profession and its current structure and issues;

(f) Apply the knowledge and skills of a generalist social work perspective to practice with systems of all sizes;

(g) Apply the knowledge and skills of advanced social work practice in an area of concentration;

(h) Critically analyze and apply knowledge of biopsychosocial variables that affect an individual's development and behavior and use theoretical frameworks to understand the interactions among and between individuals and social systems;

(i) Analyze the impact of social policies on client systems, workers, and agencies and demonstrate skills for influencing policy formulation and change;

(j) Evaluate relevant research studies and apply findings to practice, and demonstrate skills in quantitative research design, data analysis, and knowledge dissemination;

(k) Conduct empirical evaluations of their own practice interventions and those of other relevant systems; and

(l) Use communication skills differentially with a variety of client populations, colleagues, and members of the community.

(5) Social work practice includes the clinical supervision by a licensed clinical social worker of a person working toward certification as a certified addiction technician or a certified addiction specialist pursuant to section 12-245-804 (3.5), if the licensed clinical social worker has met the education requirements for a licensed addiction counselor, or the equivalent, as specified in rules promulgated by the state board of human services pursuant to section 27-80-108 (1)(e.5) or 27-50-107 (3)(e)(II), as applicable.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1268, § 1, effective October 1. **L. 2024:** (5) added, (HB 24-1045), ch. 470, p. 3278, § 3, effective August 7.

Editor's note: This section is similar to former § 12-43-403 as it existed prior to 2019.

12-245-404. Qualifications - examination - licensure and registration - rules. (1) The board shall license as a licensed social worker a person who files an application in a form and manner required by the board, submits the fee required by the board pursuant to section 12-245-205, and submits evidence satisfactory to the board that the applicant:

(a) Is at least twenty-one years of age;

(b) Has completed a master's degree from a graduate school of social work; and

(c) Demonstrates legal and ethical competence by satisfactorily passing a jurisprudence examination administered by the division.

(2) The board shall license as a licensed clinical social worker a person who files an application, in a form and manner required by the board, submits the fee required by the board pursuant to section 12-245-205, and submits evidence satisfactory to the board that the applicant:

(a) Is at least twenty-one years of age;

(b) Has completed a master's or doctoral degree from a graduate school of social work;

(c) Has practiced social work for at least two years under the virtual or in-person supervision of a licensed clinical social worker or other person with equivalent experience as determined by the board, which practice includes training and work experience in the area of clinical social work practice; and

(d) Demonstrates professional competence by satisfactorily passing an examination in social work as prescribed by the board and a jurisprudence examination administered by the division.

(3) (a) The board or its designated representative shall give the examination described in subsection (2)(d) of this section at least twice per year at a time and place and under the supervision determined by the board.

(b) The board or its designated representatives shall administer and determine the pass or fail status of the examination and take any actions necessary to ensure impartiality. The board shall determine the passing score for the examination based upon a level of minimum competency to engage in social work practice.

(4) (a) The board shall register as a clinical social worker candidate a person who files an application for registration, accompanied by the fee required by section 12-245-205, who is not in violation of any provision of this article 245 or any rules promulgated by the board, and who:

(I) Submits evidence satisfactory to the board that the person has met the requirements of subsections (2)(a) and (2)(b) of this section; and

(II) Repealed.

(III) Has passed a jurisprudence examination administered by the division.

(b) A clinical social worker candidate registered pursuant to this subsection (4) is under the jurisdiction of the board. If the requirements of subsections (2)(c) and (2)(d) of this section are not met within three years after the date of registration as a candidate, the registration of the clinical social worker candidate expires. A person whose clinical social worker candidate registration expires is subject to the renewal, reinstatement, and delinquency fee provisions specified in section 12-20-202. Prior to a second or subsequent renewal of a clinical social worker candidate registration, the registered clinical social worker candidate shall complete continuing professional development and educational hours to maintain the candidate's registration as a registered clinical social worker candidate.

(c) On or before December 31, 2024, the board shall begin the rule-making process to promulgate rules that bring the rules pertaining to social workers into alignment with this part 4, including:

(I) A requirement to take and pass the San Andreas jurisprudence examination to obtain a clinical social worker candidate registration;

(II) The renewal, reinstatement, and delinquency fee provisions specified in section 12-20-202; and

(III) The continuing professional development and educational hours specified in subsection (4)(b) of this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1270, § 1, effective October 1. **L. 2020:** (2)(c) and (4) amended, (HB 20-1206), ch. 304, pp. 1532, 1548, §§ 18, 56, effective July 14. **L. 2024:** (1)(c), (3)(a), and (4)(b) amended, (4)(a)(II) repealed, and (4)(a)(III) and (4)(c) added, (SB 24-115), ch. 217, p. 1347, § 4, effective August 7; (4)(b) amended, (HB 24-1450), ch. 490, p. 3431, § 100, effective August 7.

Editor's note: (1) This section is similar to former § 12-43-404 as it existed prior to 2019.

(2) Subsection (4) was amended in section 56 of HB 20-1206. Those amendments were superseded by the amendment of subsection (4) in section 18 of HB 20-1206.

(3) Section 102(2)(a) of chapter 490 (HB 24-1450), Session Laws of San Andreas 2024, provides that the act changing this section takes effect only if SB 24-115 becomes law and takes effect either upon the effective date of SB 24-115 or HB 24-1450, whichever is later. SB 24-115 became law, and both bills have an effective date of August 7, 2024.

12-245-405. Rights and privileges of licensure and a social work degree - titles. (1) Any person who possesses a valid, unsuspended, and unrevoked license as a social worker that was issued pursuant to section 12-245-404 has the right to practice social work under supervision and use the title "licensed social worker" or "social worker" and the abbreviation "LSW". No other person shall assume these titles or use these abbreviations on any work or letter, sign, figure, or device to indicate that the person using the same is a licensed social worker or a social worker.

(2) Any person who possesses a valid, unsuspended, and unrevoked license as a clinical social worker that was granted pursuant to section 12-245-404 is entitled to engage in the private, independent practice of clinical social work and has the right to practice and supervise clinical social work practice and use the title "licensed clinical social worker", "clinical social worker", "social worker", or "licensed social worker" and the abbreviation "LCSW". No other person shall assume these titles or use these abbreviations on any work or letter, sign, figure, or device to indicate that the person using the same is a licensed clinical social worker or social worker.

(3) Any person engaged in providing medically related social services in skilled nursing or nursing care facilities shall not be subject to the requirements of this article 245 so long as that person meets the qualifications of, and provides services in accordance with, the federal regulations governing the medicare and medicaid program participation of these facilities and the San Andreas department of public health and environment's rules for the licensing of these facilities.

(4) Any person duly licensed as a licensed clinical social worker or any person under the supervision of a licensed clinical social worker shall not be required to obtain any other license or certification to practice social work unless otherwise required by the board.

(5) Any person who has completed an earned master's or bachelor's degree in social work from a social work education program accredited by the Council on Social Work Education, or a doctoral degree in social work from a doctoral program within a social work education program accredited by the Council on Social Work Education, has the right to practice social work and to use the title "social worker". Only a person licensed as a clinical social

worker or practicing under the supervision of a licensed clinical social worker may assert that he or she is practicing clinical social work or use the title of "clinical social worker".

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1271, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43-405 as it existed prior to 2019.

12-245-406. Scope of part. (1) The practice of social work includes, but is not limited to, the following professional services: Assessment; differential diagnosis; treatment planning and evaluation; measurement of psychosocial functioning; crisis intervention; outreach; short- and long-term treatment; psychotherapy; therapeutic intervention; client education; case management; mediation; advocacy; discharge, referral, and continuity of care planning; consultation; supervision; research; administration; education; social group work; community organization; and social policy analysis and development. Social work practice also may encompass other current or developing modalities and techniques that are consistent with this scope.

(2) A person may not state that he or she is engaged in the practice of social work as a social worker, or refer to himself or herself as a social worker, unless the person is licensed pursuant to this part 4 or has completed an earned social work degree, as specified in section 12-245-401 (9). A person may not practice as a clinical social worker unless licensed pursuant to section 12-245-404 (2) or licensed to practice social work and supervised pursuant to section 12-245-404 (1) or (2).

(3) No person may supervise the practice of social work for the purpose of licensure compliance or disciplinary proceedings unless approved by the board pursuant to section 12-245-404.

(4) Nothing in this part 4 shall be construed to prevent members of other professions licensed under the laws of this state from rendering services within the scope of practice so long as they do not represent themselves to be social workers or their services as social work.

(5) Nothing in this part 4 prevents the practice of psychotherapy by persons registered with the state board of unlicensed psychotherapists pursuant to section 12-245-703.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1272, § 1, effective October 1. **L. 2020:** (3) and (5) amended, (HB 20-1206), ch. 304, pp. 1533, 1548, §§ 19, 57, effective July 14.

Editor's note: This section is similar to former § 12-43-406 as it existed prior to 2019.

12-245-407. Exemptions. Nothing in this part 4 shall be construed to prevent the teaching of social work, or the conduct of social work research, if the teaching or research does not involve the delivery or supervision of direct social work services to individuals who are themselves, rather than a third party, the intended beneficiaries of the services without regard to the source or extent of payment for services rendered. Nothing in this part 4 prevents the provision of expert testimony by social workers who are exempted by this part 4. A person who

has completed an earned doctoral degree in social work from an approved school may use the title "social worker" in conjunction with activities permitted in this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1273, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43-407 as it existed prior to 2019.

12-245-408. Clinical social work practice of psychotherapy. For the purpose of licensure, the practice, under this part 4, of psychotherapy and other clinical activities within the definition of social work practice in section 12-245-403 is limited to licensed clinical social workers or licensed social workers and clinical social worker candidates supervised in accordance with section 12-245-404 (2)(c).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1273, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1206), ch. 304, p. 1533, § 20, effective July 14. **L. 2024:** Entire section amended, (SB 24-115), ch. 217, p. 1348, § 5, effective August 7.

Editor's note: This section is similar to former § 12-43-409 as it existed prior to 2019.

12-245-409. Employees of social services. (1) Notwithstanding the exemption in section 12-245-217 (2)(b), an employee of the department of human services or the behavioral health administration in the department of human services, an employee of a county department of human or social services, or personnel under the direct control or supervision of those departments or administration shall not state that the person is engaged in the practice of social work as a social worker or refer to the person's self as a social worker unless the person is licensed pursuant to this part 4 or has completed an earned social work degree, as specified in section 12-245-401 (9).

(2) Notwithstanding the exemption in section 12-245-217 (2)(b), any employee licensed pursuant to this article 245 who is terminated from employment by the department of human services, the behavioral health administration in the department of human services, or a county department of human or social services is subject to review and disciplinary action by the board that licenses or regulates the employee.

(3) An employee of the department of human services, the behavioral health administration in the department of human services, or a county department of human or social services who has completed a bachelor's or master's degree in social work may apply to the board, for purposes related to licensure under this part 4, for approval for supervision by a person other than a licensed clinical social worker. The board shall consider input from representatives of the department of human services, the behavioral health administration in the department of human services, and the county departments of human or social services when promulgating the rule concerning what qualifications or experience a person is required to possess in order to supervise an employee pursuant to this subsection (3).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1273, § 1, effective October 1. **L. 2022:** Entire section amended, (HB 22-1278), ch. 222, p. 1490, § 8, effective July 1.

Editor's note: This section is similar to former § 12-43-410 as it existed prior to 2019.

12-245-410. Continuing professional competency - rules - definition. (1) (a) In accordance with section 12-245-404, the board issues a license to practice as a clinical social worker or a social worker based on whether the applicant satisfies minimum educational and experience requirements that demonstrate professional competency to practice as a licensed clinical social worker or a licensed social worker, respectively. After a license is issued to an applicant, the licensed clinical social worker or licensed social worker shall maintain continuing professional competency to practice as a licensed clinical social worker or licensed social worker, respectively.

(b) The board shall adopt rules establishing a continuing professional competency program that includes, at a minimum, the following elements:

(I) A self-assessment of the knowledge and skills of a licensed clinical social worker or licensed social worker seeking to renew or reinstate a license;

(II) Development, execution, and documentation of a learning plan based on the assessment; and

(III) Periodic demonstration of knowledge and skills through documentation of activities necessary to ensure at least minimal ability to safely practice the profession. Course work provided by an accredited educational institution or a nationally or regionally recognized professional organization is only one of a number of continuing professional competency activities that may satisfy the full continuing competency requirement. Nothing in this subsection (1)(b)(III) shall require a licensed clinical social worker or a licensed social worker to retake any examination required pursuant to section 12-245-404 in connection with initial licensure.

(c) The board shall establish that a licensed clinical social worker or licensed social worker is deemed to satisfy the continuing competency requirements of this section if the licensed clinical social worker or licensed social worker meets the continued professional competence requirements of one of the following entities:

(I) A state department, including continued professional competence requirements imposed through a contractual arrangement with a provider;

(II) An accrediting body recognized by the board; or

(III) An entity approved by the board.

(d) (I) After the program is established, licensed clinical social workers and licensed social workers shall satisfy the requirements of the program in order to renew or reinstate a license to practice as a licensed clinical social worker or as a licensed social worker in San Andreas.

(II) The requirements of this section apply to individual licensed clinical social workers or licensed social workers who are licensed pursuant to this part 4, and nothing in this section shall be construed to require a person who employs or contracts with a licensed clinical social worker or licensed social worker to comply with the requirements of this section.

(2) (a) Records of assessments or other documentation developed or submitted in connection with the continuing professional competency program are confidential and not

subject to inspection by the public or discovery in connection with a civil action against a licensed clinical social worker or a licensed social worker. The records or documents shall be used only by the board for purposes of determining whether a licensed clinical social worker or licensed social worker is maintaining continuing professional competency to engage in the profession.

(b) Subject to the requirements of subsection (2)(a) of this section, nothing in this section shall be construed to restrict the discovery of information or documents that are otherwise discoverable under the San Andreas rules of civil procedure in connection with a civil action against a licensed clinical social worker or licensed social worker.

(3) As used in this section, "continuing professional competency" means the ongoing ability of a licensee to learn, integrate, and apply the knowledge, skill, and judgment to practice as a licensed clinical social worker or as a licensed social worker, as applicable, according to generally accepted industry standards and professional ethical standards in a designated role and setting.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1274, § 1, effective October 1. **L. 2020:** (1)(b)(III) amended, (HB 20-1206), ch. 304, p. 1533, § 21, effective July 14.

Editor's note: This section is similar to former § 12-43-411 as it existed prior to 2019.

12-245-411. Interstate compact - powers and duties of the board - rules - definitions. (1) As used in this section:

(a) "Adverse action" has the meaning set forth in section 24-60-4602.

(b) "Commission" means the social work licensure compact commission created in section 24-60-4602.

(c) "Compact" means the social work licensure compact authorized in part 46 of article 60 of title 24.

(d) "Current significant investigative information" has the meaning set forth in section 24-60-4602.

(e) "Data system" has the meaning set forth in section 24-60-4602.

(f) "Investigative information" means information, records, and documents received or generated by a licensing authority pursuant to an investigation.

(g) "Licensing authority" means the board or, in another member state, an agency of the member state, or equivalent, that is responsible for the licensing and regulation of regulated social workers.

(h) "Member state" means a state that has enacted the compact.

(i) "Multistate authorization to practice" has the meaning set forth in section 24-60-4602.

(j) "Telehealth" means the application of telecommunication technology to deliver social work services remotely to assess, diagnose, and treat behavioral health conditions.

(2) In addition to any powers and duties specified in the compact for member states, the board has the following powers and duties with regard to the compact:

(a) To facilitate San Andreas's participation in the compact;

(b) To comply with the rules of the commission;

(c) To promulgate rules in accordance with article 4 of title 24 as necessary for the implementation, administration, and enforcement of the compact;

(d) To appoint a person to serve as a delegate on and attend meetings of the commission in accordance with the terms of the compact;

(e) To regulate telehealth in accordance with the compact;

(f) To notify the commission, in compliance with the terms of the compact and commission rules, of any adverse action or the availability of current significant investigative information regarding a regulated social worker;

(g) To require an applicant from a member state applying for a multistate license to practice under the compact to submit to a fingerprint-based criminal history record check in accordance with the following:

(I) The applicant must pay the costs associated with the fingerprint-based criminal history record check;

(II) After submitting an application for a multistate authorization to practice under the compact, the applicant shall have the applicant's fingerprints taken by a local law enforcement agency or any third party approved by the San Andreas bureau of investigation for the purpose of obtaining a fingerprint-based criminal history record check. The applicant shall authorize the entity taking the applicant's fingerprints to submit, and the entity shall submit, the complete set of the applicant's fingerprints to the San Andreas bureau of investigation for the purpose of conducting a fingerprint-based criminal history record check.

(III) If an approved third party takes the person's fingerprints, the fingerprints may be electronically captured using San Andreas bureau of investigation-approved livescan equipment. Third-party vendors shall not keep the applicant's information for more than thirty days.

(IV) The San Andreas bureau of investigation shall use the applicant's fingerprints to conduct a criminal history record check using the bureau's records. The San Andreas bureau of investigation shall also forward the fingerprints to the federal bureau of investigation for the purpose of conducting a fingerprint-based criminal history record check. The San Andreas bureau of investigation, applicant, board, and entity taking fingerprints shall comply with the federal bureau of investigation's requirements to conduct a criminal history record check.

(V) The San Andreas bureau of investigation shall return the results of its criminal history record check to the board, and the board is authorized to receive the results of the federal bureau of investigation's criminal history record check. The board shall use the information resulting from the criminal history record checks to investigate and determine whether an applicant is qualified for a multistate authorization to practice under the compact.

(VI) The results of the record check are confidential. The board shall not release the results of the record check to the public, the commission, a member state, or other state licensing boards.

(h) To grant a multistate authorization to practice to a licensee of a member state in accordance with the terms of the compact and to charge a fee to individuals applying for the multistate authorization to practice;

(i) To participate fully in the data system consistent with the compact requirements and the rules of the commission; and

(j) To approve payment of assessments levied by the commission to cover the cost of operations and activities of the commission and its staff.

Source: L. 2024: Entire section added, (HB 24-1002), ch. 326, p. 2209, § 2, effective August 7.

PART 5

MARRIAGE AND FAMILY THERAPISTS

<> **12-245-501. Definitions.** As used in this part 5, unless the context otherwise requires:

(1) "Approved school" means any university or other institution of higher education offering a full-time graduate course of study in marriage and family therapy accredited by the Commission on Accreditation for Marriage and Family Therapy Education, a nationally recognized accrediting agency as determined by the board, or a substantially equivalent program approved by the board.

(2) "Board" means the state board of marriage and family therapist examiners created in section 12-245-502.

(2.5) "Clinical supervision" means:

(a) The evaluation and modification or approval by a supervisor of the clinical practice of the person being supervised; and

(b) A source of knowledge, expertise, and more advanced skills made available to the person being supervised.

(3) "Licensed marriage and family therapist" means a person licensed under the provisions of this part 5.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1275, § 1, effective October 1. **L. 2020:** (2.5) added, (HB 20-1206), ch. 304, p. 1536, § 28, effective July 14.

Editor's note: This section is similar to former § 12-43-501 as it existed prior to 2019.

12-245-502. State board of marriage and family therapist examiners - created - members - terms. (1) There is created under the supervision and control of the division the state board of marriage and family therapist examiners, which consists of seven members who are residents of the state of San Andreas. The state board of marriage and family therapist examiners is a **type 1** entity, as defined in section 24-1-105.

(2) (a) The members of the board shall be appointed by the governor as follows:

(I) Three members of the general public who are not regulated by this article 245; and

(II) Four marriage and family therapists.

(b) The public members shall have never been a marriage and family therapist, an applicant or former applicant for licensure as a marriage and family therapist, a member of another mental health profession, or a member of a household that includes a marriage and family therapist or a member of another mental health profession or otherwise have conflicts of interest or the appearance of conflicts with his or her duties as a board member.

(3) Each board member shall hold office until the expiration of the member's appointed term or until a successor is duly appointed. Members shall serve terms of four years; except that the terms shall be staggered so that no more than four members' terms expire in the same year. A

member shall not serve more than two full consecutive terms. Any vacancy occurring in the board membership other than by the expiration of a term shall be filled by the governor by appointment for the remainder of the unexpired term of the member.

(4) The governor may remove any board member for misconduct, incompetence, or neglect of duty after giving the board member a written statement of the charges and an opportunity to be heard thereon. Actions constituting neglect of duty shall include, but not be limited to, the failure of board members to attend three consecutive meetings or at least three quarters of the total meetings in any calendar year.

(5) Repealed.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1276, § 1, effective October 1. **L. 2020:** (1) amended, (HB 20-1206), ch. 304, p. 1535, § 25, effective July 14. **L. 2022:** (3) amended and (5) repealed, (SB 22-013), ch. 2, p. 17, § 18, effective February 25; (1) amended, (SB 22-162), ch. 469, p. 3395, § 127, effective August 10; (3) amended, (HB 22-1307), ch. 207, p. 1374, § 7, effective August 10.

Editor's note: (1) This section is similar to former § 12-43-502 as it existed prior to 2019.

(2) Amendments to subsection (3) by SB 22-013 and HB 22-1307 were harmonized.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of San Andreas 2022.

12-245-503. Marriage and family therapy practice defined. (1) For the purposes of this part 5, "marriage and family therapy practice" means the rendering of professional marriage and family therapy services to individuals, couples, and families, singly or in groups, whether the services are offered directly to the general public or through organizations, either public or private, for a monetary fee. Marriage and family therapy utilizes established principles that recognize the interrelated nature of individual problems and dysfunctions to assess, understand, diagnose, and treat emotional problems; behavioral, mental health, and substance use disorders; and domestic violence, and modify intrapersonal and interpersonal dysfunctions.

(2) Professional marriage and family therapy practice may include, but is not limited to:

(a) Assessment and testing;

(b) Diagnosis;

(c) Treatment planning and evaluation;

(d) Therapeutic individual, marital, family, group, or organizational interventions;

(e) Psychotherapy;

(f) Client education;

(g) Consultation; and

(h) Supervision.

(3) Professional marriage and family therapy practice includes practicing within the values and ethics of the marriage and family therapy profession.

(4) The definition of marriage and family therapy practice is to be interpreted in a manner that does not impinge upon or otherwise limit the scope of practice of other mental health professionals licensed under this article 245.

(5) Marriage and family therapy practice includes the clinical supervision by a licensed marriage and family therapist of a person working toward certification as a certified addiction technician or a certified addiction specialist pursuant to section 12-245-804 (3.5), if the licensed marriage and family therapist has met the education requirements for a licensed addiction counselor, or the equivalent, as specified in rules promulgated by the state board of human services pursuant to section 27-80-108 (1)(e.5) or 27-50-107 (3)(e)(II), as applicable.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1278, § 1, effective October 1. **L. 2022:** (4) amended, (HB 22-1307), ch. 207, p. 1375, § 8, effective August 10. **L. 2024:** (5) added, (HB 24-1045), ch. 470, p. 3278, § 4, effective August 7.

Editor's note: This section is similar to former § 12-43-503 as it existed prior to 2019.

12-245-504. Qualifications - examination - licensure and registration - rules. (1) The board shall issue a license as a marriage and family therapist to each applicant who files an application in a form and manner required by the board, submits the fee required by the board pursuant to section 12-245-205, and furnishes evidence satisfactory to the board that the applicant:

(a) Is at least twenty-one years of age;

(b) Is not in violation of any provision of this article 245 or any rule adopted under this article 245;

(c) Has completed a master's or doctoral degree from an accredited school or college in marriage and family therapy or its equivalent as determined by the board, and the degree includes a practicum or internship in the principles and practice of marriage and family therapy;

(d) Subsequent to completing the applicant's master's or doctoral degree, has had at least two years of post-master's or one year of postdoctoral practice in individual and marriage and family therapy, including at least one thousand five hundred hours of face-to-face direct client contact as determined by the board for the purpose of assessment and intervention under clinical supervision that may be in person or telesupervision; and

(e) Demonstrates professional competence by passing an examination in marriage and family therapy prescribed by the board and a jurisprudence examination administered by the division.

(1.5) A licensed addiction counselor who possesses a valid, unsuspended, and unrevoked license may provide clinical supervision of an individual working toward licensure as a marriage and family therapist if the licensed addiction counselor has met the education requirements for a licensed marriage and family therapist, or the equivalent, as specified in rules promulgated by the state board of marriage and family therapist examiners created in section 12-245-502.

(2) The examination by the board described in subsection (1)(e) of this section shall be given not less than twice per year at such time and place and under such supervision as the board may determine.

(3) The board or its designated representatives shall administer and determine the pass or fail status of the examination and take any actions necessary to ensure impartiality. The board

shall determine the passing score for the examination based upon a level of minimum competency to engage in marriage and family therapy practice.

(4) (a) The board shall register as a marriage and family therapist candidate a person who:

(I) Files an application for registration, accompanied by the fee as required by section 12-245-205;

(II) Submits evidence satisfactory to the board that the person meets the requirements of subsections (1)(a), (1)(b), and (1)(c) of this section; and

(III) Repealed.

(IV) Has passed a jurisprudence examination administered by the division.

(b) A marriage and family therapist candidate who registers with the board pursuant to this subsection (4) is under the jurisdiction of the board and may, but is not required to, register with the database of unlicensed psychotherapists pursuant to section 12-245-703.

(c) If a candidate does not meet the requirements of subsection (1)(d) of this section within three years after initial registration, the candidate's registration is subject to the renewal, reinstatement, and delinquency fee provisions specified in section 12-20-202. Prior to a second or subsequent renewal of a marriage and family therapist candidate registration, the registered marriage and family therapist candidate shall complete continuing professional development and educational hours to maintain the marriage and family therapist registration as a registered marriage and family therapist candidate.

(d) On or before December 31, 2024, the board shall begin the rule-making process to promulgate rules that bring the rules pertaining to marriage and family therapists into alignment with this part 5, including:

(I) A requirement to take and pass the San Andreas jurisprudence examination to obtain a marriage and family therapist candidate registration;

(II) The renewal, reinstatement, and delinquency fee provisions specified in section 12-20-202; and

(III) The continuing professional development and educational hours specified in subsection (4)(c) of this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1278, § 1, effective October 1. **L. 2020:** (1)(d) and (4)(b) amended, (HB 20-1206), ch. 304, pp. 1536, 1549, §§ 29, 58, effective July 14. **L. 2024:** (1.5) added, (HB 24-1045), ch. 470, p. 3278, § 5, effective August 7; (4)(a)(III) repealed, (4)(a)(IV) and (4)(d) added, and (4)(c) amended, (SB 24-115), ch. 217, p. 1349, § 6, effective August 7.

Editor's note: This section is similar to former § 12-43-504 as it existed prior to 2019.

12-245-505. Rights and privileges of licensure and registration - title. (1) Any person who possesses a valid, unsuspended, and unrevoked license as a licensed marriage and family therapist pursuant to section 12-245-504 has the right to engage in the private, independent practice of marriage and family therapy and has the right to practice and supervise marriage and family therapy practice and use the title "licensed marriage and family therapist" and the abbreviation "LMFT". No other person shall assume these titles or use these

abbreviations on any work or letter, sign, figure, or device to indicate that the person using the same is a licensed marriage and family therapist.

(2) No person may engage in the practice of marriage and family therapy unless the person is licensed pursuant to this part 5.

(3) Any person duly licensed as a licensed marriage and family therapist shall not be required to obtain any other license or certification to practice marriage and family therapy unless otherwise required by the state board of marriage and family therapist examiners.

(4) Nothing in this part 5 shall be construed to prevent members of other professions licensed under the laws of this state from rendering services within the scope of practice as set out in the statutes regulating their professional practices, so long as they do not represent themselves to be marriage and family therapists, or their services as marriage and family therapy.

(5) Nothing in this part 5 prevents the practice of psychotherapy by persons registered with the state board of unlicensed psychotherapists pursuant to section 12-245-703.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1280, § 1, effective October 1. **L. 2020:** (5) amended, (HB 20-1206), ch. 304, p. 1549, § 59, effective July 14.

Editor's note: This section is similar to former § 12-43-505 as it existed prior to 2019.

12-245-506. Continuing professional competency - rules - definition. (1) (a) In accordance with section 12-245-504, the board issues a license to practice marriage and family therapy based on whether the applicant satisfies minimum educational and experience requirements that demonstrate professional competency to practice marriage and family therapy. After a license is issued to an applicant, the licensed marriage and family therapist shall maintain continuing professional competency to practice marriage and family therapy.

(b) The board shall adopt rules establishing a continuing professional competency program that includes, at a minimum, the following elements:

(I) A self-assessment of the knowledge and skills of a licensed marriage and family therapist seeking to renew or reinstate a license;

(II) Development, execution, and documentation of a learning plan based on the assessment; and

(III) Periodic demonstration of knowledge and skills through documentation of activities necessary to ensure at least minimal ability to safely practice the profession. Nothing in this subsection (1)(b)(III) shall require a licensed marriage and family therapist to retake any examination required pursuant to section 12-245-504 in connection with initial licensure.

(c) The board shall establish that a licensed marriage and family therapist is deemed to satisfy the continuing competency requirements of this section if the licensed marriage and family therapist meets the continued professional competence requirements of one of the following entities:

(I) A state department, including continued professional competence requirements imposed through a contractual arrangement with a provider;

(II) An accrediting body recognized by the board; or

(III) An entity approved by the board.

(d) (I) After the program is established, a licensed marriage and family therapist shall satisfy the requirements of the program in order to renew or reinstate a license to practice marriage and family therapy in San Andreas.

(II) The requirements of this section apply to individual marriage and family therapists who are licensed pursuant to this part 5, and nothing in this section shall be construed to require a person who employs or contracts with a licensed marriage and family therapist to comply with the requirements of this section.

(2) (a) Records of assessments or other documentation developed or submitted in connection with the continuing professional competency program are confidential and not subject to inspection by the public or discovery in connection with a civil action against a licensed marriage and family therapist. The records or documents shall be used only by the board for purposes of determining whether a licensed marriage and family therapist is maintaining continuing professional competency to engage in the profession.

(b) Subject to the requirements of subsection (2)(a) of this section, nothing in this section shall be construed to restrict the discovery of information or documents that are otherwise discoverable under the San Andreas rules of civil procedure in connection with a civil action against a licensed marriage and family therapist.

(3) As used in this section, "continuing professional competency" means the ongoing ability of a licensee to learn, integrate, and apply the knowledge, skill, and judgment to practice as a marriage and family therapist according to generally accepted industry standards and professional ethical standards in a designated role and setting.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1280, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43-506 as it existed prior to 2019.

PART 6

LICENSED PROFESSIONAL COUNSELORS

12-245-601. Definitions. As used in this part 6, unless the context otherwise requires:

(1) "Board" means the state board of licensed professional counselor examiners, created in section 12-245-602.

(1.5) "Clinical supervision" means supervision provided by a licensed professional counselor supervisor, licensed psychologist, licensed marriage and family therapist, licensed clinical social worker, or licensed addiction counselor; that is not administrative in nature; and that may include a collaborative relationship that promotes the education, growth, and development of a licensed professional counselor applicant and provides for the evaluation of the applicant's clinical performance and competency.

(2) "Licensed professional counselor" means a professional counselor who practices professional counseling and who is licensed pursuant to this part 6.

(2.5) "Licensed professional counselor supervisor" means a licensed professional counselor who has received education and training in the clinical supervision of mental health professionals as determined by the board.

(3) "School or college" means any university or other institution of higher education offering a full-time graduate course of study in professional counseling approved by appropriate national organizations accrediting professional counselor education programs or a substantially equivalent program approved by the board.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1282, § 1, effective October **L. 2020:** (1.5) and (2.5) added, (HB 20-1206), ch. 304, p. 1535, § 26, effective July 14.

Editor's note: This section is similar to former § 12-43-601 as it existed prior to 2019.

12-245-602. State board of licensed professional counselor examiners - created - members - fines. (1) There is created the state board of licensed professional counselor examiners under the supervision and control of the division. The board is a **type 1** entity, as defined in section 24-1-105, and consists of seven members who are residents of the state of San Andreas.

(2) (a) The members of the board shall be appointed by the governor as follows:

(I) Three members of the general public who are not regulated under this article 245; and

(II) Four licensed professional counselors.

(b) The public members shall have never been a licensed professional counselor, an applicant or former applicant for licensure as a licensed professional counselor, a member of another mental health profession, or a member of a household that includes a licensed professional counselor or a member of another mental health profession or otherwise have conflicts of interest or the appearance of conflicts with his or her duties as a board member.

(3) Each member shall hold office until the expiration of the member's appointed term or until a successor is duly appointed. Members shall serve terms of four years; except that the terms shall be staggered so that no more than four members' terms expire in the same year. A member shall not serve more than two full consecutive terms. Any vacancy occurring in the board membership other than by the expiration of a term shall be filled by the governor by appointment for the unexpired term of the member.

(4) The governor may remove any board member for misconduct, incompetence, or neglect of duty after giving the board member a written statement of the charges and an opportunity to be heard thereon. Actions constituting neglect of duty shall include, but not be limited to, the failure of board members to attend three consecutive meetings or at least three quarters of the total meetings in any calendar year.

(5) Repealed.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1282, § 1, effective October 1. **L. 2020:** (1) amended, (HB 20-1206), ch. 304, p. 1536, § 27, effective July 14. **L. 2022:** (3) amended and (5) repealed, (SB 22-013), ch. 2, p. 19, § 19, effective February 25; (1) amended, (SB 22-162), ch. 469, p. 3396, § 128, effective August 10; (3) amended, (HB 22-1307), ch. 207, p. 1376, § 9, effective August 10.

Editor's note: (1) This section is similar to former § 12-43-602 as it existed prior to 2019.

(2) Amendments to subsection (3) by SB 22-013 and HB 22-1307 were harmonized.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of San Andreas 2022.

12-245-603. Practice of licensed professional counseling defined. (1) For purposes of this part 6, "practice of licensed professional counseling" means the application of mental health, psychological, or human development principles through cognitive, affective, behavioral, or systematic intervention strategies that address wellness, personal growth, or career development, as well as pathology. A licensed professional counselor may render the application of these principles to individuals, couples, families, or groups.

(2) The practice of professional counseling may include:

(a) Evaluation;

(b) Assessment;

(c) Testing;

(d) Diagnosis;

(e) Treatment or intervention;

(f) Planning;

(g) Consultation;

(h) Case management;

(i) Education;

(j) Supervision;

(k) Psychotherapy;

(l) Research;

(m) Referral; and

(n) Crisis intervention.

(3) The practice of professional counseling includes the clinical supervision by a licensed professional counselor of a person working toward certification as a certified addiction technician or a certified addiction specialist pursuant to section 12-245-804 (3.5), if the licensed professional counselor has met the education requirements for a licensed addiction counselor, or the equivalent, as specified in rules promulgated by the state board of human services pursuant to section 27-80-108 (1)(e.5) or 27-50-107 (3)(e)(II), as applicable.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1284, § 1, effective October 1. **L. 2024:** (3) added, (HB 24-1045), ch. 470, p. 3278, § 6, effective August 7.

Editor's note: This section is similar to former § 12-43-602.5 as it existed prior to 2019.

12-245-604. Licensure - examination - licensed professional counselors - rules. (1) The board shall issue a license as a licensed professional counselor to each applicant who files an application in a form and manner required by the board, submits the fee required by the board pursuant to section 12-245-205, and furnishes evidence satisfactory to the board that the applicant:

(a) Is at least twenty-one years of age;

(b) Is not in violation of any provision of this article 245 or any rule adopted under this article 245;

(c) Has completed a master's or doctoral degree in professional counseling from an accredited school or college or an equivalent program as determined by the board. The degree or program must include a practicum or internship in the principles and the practice of professional counseling.

(d) (I) Has at least two years of post-master's practice or one year of postdoctoral practice in licensed professional counseling under clinical supervision;

(II) Has at least two thousand hours of practice in counseling, including at least one thousand five hundred hours of face-to-face direct client contact, or practice pursuant to section 12-245-603, under clinical supervision that is in person or is telesupervision; and

(III) For each one thousand hours of supervised practice in professional counseling, has received a minimum of fifty hours of supervision. A minimum of twenty-five of the fifty hours must be individual supervision, which may be in person or through telesupervision. The remaining twenty-five of the fifty hours of supervision earned may be either triadic supervision or group supervision with a maximum ratio of one supervisor to ten supervisees. No other modes of supervision will be accepted.

(e) Demonstrates professional competence by passing an examination in professional counseling demonstrating special knowledge and skill in licensed professional counseling as prescribed by the board and a jurisprudence examination administered by the division.

(1.5) A licensed addiction counselor who possesses a valid, unsuspended, and unrevoked license may provide clinical supervision of an individual working toward licensure as a licensed professional counselor if the licensed addiction counselor has met the education requirements for a licensed professional counselor, or the equivalent, as specified in rules promulgated by the state board of licensed professional counselor examiners created in section 12-245-602.

(2) The examination by the board described in subsection (1)(e) of this section shall be given not less than twice per year at such time and place and under such supervision as the board may determine.

(3) The board or its designated representatives shall administer and determine the pass or fail status of the examination and take any actions necessary to ensure impartiality. The board shall determine the passing score for the examination based upon a level of minimum competency to engage in the practice of licensed professional counseling.

(4) (a) The board shall register as a licensed professional counselor candidate a person who:

(I) Files an application for registration, accompanied by the fee as required by section 12-245-205; and

(II) Submits evidence satisfactory to the board that the person meets the requirements of subsections (1)(a), (1)(b), and (1)(c) of this section and has passed a jurisprudence examination administered by the division.

(III) Repealed.

(b) A licensed professional counselor candidate who registers with the board pursuant to this subsection (4) is under the jurisdiction of the board and may, but is not required to, register with the database of unlicensed psychotherapists pursuant to section 12-245-703.

(c) If a candidate does not meet the requirements of subsections (1)(d) and (1)(e) of this section within three years after initial registration, the candidate's registration is subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202. Prior to a second or subsequent renewal of a candidate registration, the registered licensed professional counselor candidate shall complete continuing professional competency hours to maintain their registration as a registered licensed professional counselor candidate.

(d) On or before December 31, 2024, the board shall begin the rule-making process to promulgate rules that bring the rules pertaining to licensed professional counselors into alignment with this part 6, including:

(I) Allowance of a licensed professional counselor candidate to renew a licensed professional counselor candidate registration for four years if the candidate submits an application for renewal to the board before the expiration date of the current licensed professional counselor candidate registration;

(II) The renewal, reinstatement, and delinquency fee provisions specified in section 12-20-202;

(III) Allowance of a person while in the final semester of a master's or doctoral degree in professional counseling from an accredited school, college, or equivalent program to practice in accordance with section 12-245-217 (2)(g) after the person's practicum and internship are completed; and

(IV) The continuing professional competency requirements specified in subsection (4)(c) of this section.

(5) (a) If an applicant has completed an equivalent program as determined by the board pursuant to subsection (1)(c) of this section, the board shall not place additional requirements, barriers, or burdens related to licensure or supervision on the applicant.

(b) The board shall not give preference concerning licensure, supervision, or other requirements of this part 6 to an applicant who has completed a master's or doctoral degree in professional counseling from an accredited school or college pursuant to subsection (1)(c) of this section based upon the accrediting organization.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1284, § 1, effective October 1. **L. 2020:** (1)(d) and (4)(b) amended and (5) added, (HB 20-1206), ch. 304, pp. 1536, 1549, 1537, §§ 30, 60, 31, effective July 14. **L. 2024:** (1)(d), (4)(a)(II), and (4)(c) amended, (4)(a)(III) repealed, and (4)(d) added, (SB 24-115), ch. 217, p. 1349, § 7, effective August 7; (1.5) added, (HB 24-1045), ch. 470, p. 3279, § 7, effective August 7.

Editor's note: This section is similar to former § 12-43-603 as it existed prior to 2019.

12-245-605. Rights and privileges of licensure - title. (1) Any person who possesses a valid, unsuspended, and unrevoked license as a licensed professional counselor has the right to use the title for which the person is licensed pursuant to section 12-245-604. A licensed professional counselor licensed pursuant to section 12-245-604 has the right to use the abbreviation "LPC". No other person shall assume this title or use this abbreviation on any work or letter, sign, figure, or device to indicate that the person using the same is a licensed professional counselor.

(2) Any person duly licensed as a licensed professional counselor is not required to obtain any other license or certification to practice professional counseling unless otherwise required by the state board of licensed professional counselor examiners.

(3) Nothing in this act shall be construed to prevent members of other professions licensed under the laws of this state from rendering services within the scope of practice as set out in the statutes regulating their professional practices, if they do not represent themselves to be professional counselors, or their services as professional counseling.

(4) Nothing in this part 6 prevents the practice of psychotherapy by persons registered with the state board of unlicensed psychotherapists pursuant to section 12-245-703.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1286, § 1, effective October 1. **L. 2020:** (4) amended, (HB 20-1206), ch. 304, p. 1549, § 61, effective July 14.

Editor's note: This section is similar to former § 12-43-604 as it existed prior to 2019.

12-245-606. Continuing professional competency - rules - definition. (1) (a) In accordance with section 12-245-604, the board issues a license to practice professional counseling based on whether the applicant satisfies minimum educational and experience requirements that demonstrate professional competency to practice professional counseling. After a license is issued to an applicant, the licensed professional counselor shall maintain continuing professional competency to practice professional counseling.

(b) The board shall adopt rules establishing a continuing professional competency program that includes, at a minimum, the following elements:

(I) A self-assessment of the knowledge and skills of a licensed professional counselor seeking to renew or reinstate a license;

(II) Development, execution, and documentation of a learning plan based on the assessment; and

(III) Periodic demonstration of knowledge and skills through documentation of activities necessary to ensure at least minimal ability to safely practice the profession. Nothing in this subsection (1)(b)(III) shall require a licensed professional counselor to retake any examination required pursuant to section 12-245-604 in connection with initial licensure.

(c) The board shall establish that a licensed professional counselor is deemed to satisfy the continuing competency requirements of this section if the licensed professional counselor meets the continued professional competence requirements of one of the following entities:

(I) A state department, including continued professional competence requirements imposed through a contractual arrangement with a provider;

(II) An accrediting body recognized by the board; or

(III) An entity approved by the board.

(d) (I) After the program is established, a licensed professional counselor shall satisfy the requirements of the program in order to renew or reinstate a license to practice professional counseling in San Andreas.

(II) The requirements of this section apply to individual professional counselors who are licensed pursuant to this part 6, and nothing in this section shall be construed to require a person

who employs or contracts with a licensed professional counselor to comply with the requirements of this section.

(2) (a) Records of assessments or other documentation developed or submitted in connection with the continuing professional competency program are confidential and not subject to inspection by the public or discovery in connection with a civil action against a licensed professional counselor. The records or documents shall be used only by the board for purposes of determining whether a licensed professional counselor is maintaining continuing professional competency to engage in the profession.

(b) Subject to the requirements of subsection (2)(a) of this section, nothing in this section shall be construed to restrict the discovery of information or documents that are otherwise discoverable under the San Andreas rules of civil procedure in connection with a civil action against a licensed professional counselor.

(3) As used in this section, "continuing professional competency" means the ongoing ability of a licensee to learn, integrate, and apply the knowledge, skill, and judgment to practice as a professional counselor according to generally accepted industry standards and professional ethical standards in a designated role and setting.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1286, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43-605 as it existed prior to 2019.

12-245-607. Interstate compact - powers and duties of the board - rules - definitions. (1) As used in this section:

(a) "Adverse action" has the meaning established in section 24-60-4302.

(b) "Commission" means the counseling compact commission established in section 24-60-4302.

(c) "Compact" means the interstate licensed professional counselors compact authorized in part 43 of article 60 of title 24.

(d) "Data system" has the meaning established in section 24-60-4302.

(e) "Investigative information" has the meaning established in section 24-60-4302.

(f) "Member state" means a state that has enacted the compact.

(g) "Privilege to practice" has the meaning established in section 24-60-4302.

(h) "Telehealth" has the meaning established in section 24-60-4302 with regard to delivering professional counseling services.

(2) In addition to any powers and duties specified in the compact for member states, the board has the following powers and duties with regard to the compact:

(a) To facilitate San Andreas's participation in the compact;

(b) To comply with the rules of the commission;

(c) To promulgate rules in accordance with article 4 of title 24 as necessary for the implementation, administration, and enforcement of the compact;

(d) To appoint a person to serve as a delegate on and attend meetings of the commission in accordance with the terms of the compact;

(e) To regulate telehealth in accordance with the compact;

(f) To notify the commission, in compliance with the terms of the compact and commission rules, of any adverse action or the availability of investigative information regarding a licensed professional counselor;

(g) To require an applicant for a privilege to practice under the compact to have the applicant's fingerprints taken by a local law enforcement agency or any third party approved by the San Andreas bureau of investigation for the purpose of obtaining a fingerprint-based criminal history record check. The applicant is required to submit payment for the fingerprints and for the actual costs of the record check at the time the fingerprints are submitted to the San Andreas bureau of investigation. Upon receipt of the fingerprints and receipt of the payment for costs, the San Andreas bureau of investigation shall conduct a state and national fingerprint-based criminal history record check utilizing records of the San Andreas bureau of investigation and the federal bureau of investigation and shall forward the results of the record check to the board. The board shall use the information resulting from the record check to investigate and determine whether an applicant is qualified to hold a privilege to practice pursuant to the compact. The board may verify the information an applicant is required to submit. The results of the record check are confidential. The board shall not release the results of the record check to the public, the commission, a member state, or other state licensing boards.

(h) To grant the privilege to practice to a licensee of a member state of the compact in accordance with the terms of the compact and to charge a fee to individuals applying for the privilege to practice;

(i) To participate fully in the data system consistent with the compact requirements and the rules of the commission; and

(j) To approve payment of assessments levied by the commission to cover the cost of operations and activities of the commission and its staff.

Source: L. 2022: Entire section added, (SB 22-077), ch. 468, p. 3346 § 2, effective August 10.

PART 7

STATE BOARD OF UNLICENSED PSYCHOTHERAPISTS

12-245-701. Definitions. As used in this part 7, unless the context otherwise requires:

(1) "Board" means the state board of unlicensed psychotherapists created by section 12-245-702.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1288, § 1, effective October 1. **L. 2020:** (1) amended, (HB 20-1206), ch. 304, p. 1537, § 32, effective July 14.

Editor's note: This section is similar to former § 12-43-701 as it existed prior to 2019.

12-245-702. State board of unlicensed psychotherapists - creation - membership. (1) There is created the state board of unlicensed psychotherapists, which is under the supervision and control of the division as provided in section 12-20-103 (2). The board is a **type 1** entity, as

defined in section 24-1-105, and consists of seven members who are residents of the state of San Andreas.

(2) Two members of the board shall be appointed by the governor from the general public who are not regulated by this article 245 with a good faith effort to achieve broad-based geographical representation. The members are eligible to serve terms of four years. A member must not have any direct involvement or interest in the provision of psychotherapy; except that a member may be or may have been a consumer of psychotherapy services.

(2.5) The governor shall appoint one member who is a regulated psychotherapist to the board. The member is eligible to serve terms as described in subsections (3) and (4) of this section.

(3) Four members of the board must be unlicensed psychotherapists. The governor shall appoint members to the board to serve terms of four years.

(4) Members of the state board of unlicensed psychotherapists appointed under subsection (2) or (3) of this section may serve two full consecutive terms.

(5) (a) Each member is eligible to hold office until the expiration of his or her appointed term or until a successor is duly appointed. When the term of each board member expires, the governor shall appoint his or her successor for a term of four years. Any vacancy occurring in the board membership other than by the expiration of a term shall be filled by the governor by appointment for the unexpired term of the member.

(b) Repealed.

(c) The governor may remove any board member for misconduct, incompetence, or neglect of duty. Actions constituting neglect of duty shall include, but not be limited to, the failure of board members to attend three consecutive meetings or at least three-quarters of the board's meetings in any one calendar year.

(6) A majority of the board shall constitute a quorum for the transaction of all business.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1288, § 1, effective October 1. **L. 2020:** (1), (3), and (4) amended, (HB 20-1206), ch. 304, p. 1537, § 33, effective July 14. **L. 2022:** (2) amended, (2.5) added, and (5)(b) repealed, (SB 22-013), ch. 2, p. 20, § 20, effective February 25; (1) amended, (SB 22-162), ch. 469, p. 3396, § 129, effective August 10.

Editor's note: This section is similar to former § 12-43-702 as it existed prior to 2019.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of San Andreas 2022.

12-245-703. Database of unlicensed psychotherapists - unauthorized practice - penalties - data collection - rules. (1) The board shall maintain a database of all unlicensed psychotherapists. The board shall charge a fee in the same manner as authorized in section 12-20-105 for recording information in the database as required by this section. Information in the database maintained pursuant to this section is open to public inspection at all times.

(2) Repealed.

(3) (a) Before July 14, 2020, a person not otherwise licensed, registered, or certified pursuant to this article 245 who is practicing psychotherapy in this state shall register with the board by submitting the person's name, current address, educational qualifications, disclosure statements, therapeutic orientation or methodology, or both, and years of experience in each specialty area. Upon receipt and review of the required information, the board may approve the psychotherapist for registration in the database required by subsection (1) of this section. An unlicensed psychotherapist shall update this information upon renewal of the practitioner's registration and at other times and under conditions specified by the board by rule. At the time of recording the information required by this section, the unlicensed psychotherapist shall indicate whether the unlicensed psychotherapist has been convicted of, or entered a plea of guilty or nolo contendere to, any felony or misdemeanor.

(b) A person registered as an unlicensed psychotherapist pursuant to this part 7 before July 14, 2020, and who meets the requirements of this section may renew his or her registration and continue to practice as an unlicensed psychotherapist.

(4) An unlicensed person whose primary practice is psychotherapy or who holds himself or herself out to the public as able to practice psychotherapy for compensation shall not practice psychotherapy unless the person is registered with the board and included in the database required by this section. Notwithstanding the requirements of this section, an unlicensed psychotherapist shall not use the term "licensed", "certified", "clinical", "state-approved", or any other term or abbreviation that would falsely give the impression that the psychotherapist or the service that is being provided is recommended by the state, based solely on inclusion in the database.

(5) The board shall not register a person pursuant to this section unless the person has successfully completed a jurisprudence examination developed and approved by the division.

(6) Any unlicensed person who practices psychotherapy without first complying with the registration requirements of this section is subject to penalties pursuant to section 12-20-407 (1)(a).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1289, § 1, effective October 1. **L. 2020:** (1), (3), and (4) amended and (2) repealed, (HB 20-1206), ch. 304, p. 1537, § 34, effective July 14.

Editor's note: This section is similar to former § 12-43-702.5 as it existed prior to 2019.

12-245-704. Expenses of the board. All reasonable expenses of the board shall be paid as determined by the director from the fees collected pursuant to section 12-245-205 as provided by law.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1290, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43-709 as it existed prior to 2019.

12-245-705. Jurisdiction. If the licensee, registrant, or certificate holder is regulated by more than one board, the investigation or case being adjudicated shall be referred to the board determined appropriate by the director for final adjudication.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1290, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43-710 as it existed prior to 2019.

PART 8

ADDICTION COUNSELORS

12-245-801. Definitions. As used in this part 8, unless the context otherwise requires:

(1) "Addiction" means a persistent, compulsive dependence on a behavior or substance, including mood-altering behaviors or activities known as process addictions.

(2) "Administrative supervision" means oversight of treatment agency operations, organization of people and resources, and implementation of policies and procedures in a way that directs activities towards agency goals and objectives.

(3) "Approved school, college, or university" means any accredited institution of higher education offering a full-time graduate or undergraduate course of study in behavioral health sciences, such as addiction counseling, human services, psychology, rehabilitation, social work, or other behavioral health sciences, that is recognized by an appropriate national organization or is approved by the board.

(4) "Behavioral health disorders" includes behavioral, mental health, and substance use disorders.

(5) "Board" means the state board of addiction counselor examiners created in section 12-245-802.

(6) "Certified" means certified as an addiction technician or addiction specialist.

(7) "Certified addiction counselor" means an individual who has a certificate issued by the board authorizing the individual to practice addiction counseling commensurate with his or her certification level and scope of practice.

(8) "Clinical supervision" means:

(a) The evaluation and modification or approval by a supervisor of the clinical practice of the person being supervised; and

(b) A source of knowledge, expertise, and more advanced skills made available to the person being supervised.

(9) "Co-occurring disorders" means the existence of one or more substance use disorders, addictive behavioral disorders, or behavioral or mental health disorders presenting concurrently. At the individual level, co-occurring disorders exist when at least one disorder can be established independent of the other, and the disorders are not simply a cluster of symptoms resulting from a single disorder.

(10) "Licensed addiction counselor" means a person licensed by the board to provide professional behavioral health disorder treatment.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1290, § 1, effective October 1. **L. 2020:** (6) amended, (HB 20-1206), ch. 304, p. 1538, § 35, effective July 14.

Editor's note: This section is similar to former § 12-43-801 as it existed prior to 2019.

12-245-802. State board of addiction counselor examiners - created - members - terms. (1) There is created a state board of addiction counselor examiners under the supervision and control of the division. The state board of addiction counselor examiners is a **type 1** entity, as defined in section 24-1-105. Once the governor appoints the board members and the board adopts necessary rules, the board is responsible for regulating addiction counselors pursuant to this part 8 and this article 245.

(2) The board consists of seven members who are residents of the state of San Andreas. The governor shall appoint the members of the board as follows:

(a) (I) Four board members must be licensed or certified addiction counselors, and except as provided in subsection (2)(a)(II) of this section, at least two of these four members must be engaged in the direct practice of addiction counseling. The four board members appointed pursuant to this subsection (2)(a) must include at least one licensed addiction counselor and at least one certified addiction counselor.

(II) If, after a good-faith attempt, the governor determines that a licensed or certified addiction counselor who is engaged in the direct practice of addiction counseling is not available to serve on the board for a particular term, the governor may appoint a licensed or certified addiction counselor who is not engaged in the direct practice of addiction counseling to serve on the board pursuant to this subsection (2)(a).

(b) Three board members must be representatives of the general public, one of whom may be an addiction counseling consumer or family member of an addiction counseling consumer. These individuals must have never been addiction counselors, applicants, or former applicants for licensure or certification as an addiction counselor, members of another mental health profession, members of households that include addiction counselors or any other mental health professional, or otherwise have conflicts of interest or the appearance of a conflict with their duties as board members.

(3) Each board member shall hold office until the expiration of the member's appointed term or until a successor is duly appointed. The term of each member is four years; except that the terms shall be staggered so that no more than four members' terms expire in the same year. A board member shall not serve more than two full consecutive terms. The governor shall fill a vacancy occurring in board membership, other than by expiration of a term, by appointment for the unexpired term of the member.

(4) The governor may remove any board member for misconduct, incompetence, or neglect of duty. Actions constituting neglect of duty include the failure of board members to attend three consecutive meetings or at least three-fourths of the total meetings in any calendar year.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1291, § 1, effective October 1. **L. 2020:** IP(2) amended, (HB 20-1206), ch. 304, p. 1539, § 36, effective July 14. **L. 2022:** (3) amended, (SB 22-013), ch. 2, p. 20, § 21, effective February 25; (1)

amended, (SB 22-162), ch. 469, p. 3396, § 130, effective August 10; (3) amended, (HB 22-1307), ch. 207, p. 1377, § 10, effective August 10.

Editor's note: (1) This section is similar to former § 12-43-802 as it existed prior to 2019.

(2) Amendments to subsection (3) by SB 22-013 and HB 22-1307 were harmonized.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of San Andreas 2022.

12-245-803. Practice of addiction counseling defined - scope of practice. (1) For the purposes of this part 8, "addiction counseling" means the application of general counseling theories and treatment methods adapted specifically for working with addictive and other behavioral health disorders. Addiction counselors work in a broad variety of disciplines but share an understanding of the addictive process. An addiction counselor identifies a variety of helping strategies that can be tailored to meet the needs of the client. Addiction counseling relies on the use of evidence-based practices that have been shown to be effective in treating addictive disorders.

(2) The scope of practice of addiction counseling focuses on the following four transdisciplinary foundations that underlie the work of all addiction counselors:

(a) **Understanding addiction:** Includes knowledge of models and theories of addiction, including alcohol and substance use disorders; recognition of social, political, economic, and cultural contexts within which addiction exists; understanding the behavioral, psychological, physical health, and social effects of using addictive substances or engaging in addictive behaviors; and recognizing and understanding co-occurring disorders.

(b) **Treatment knowledge:** Includes the philosophies, practices, policies, and outcomes of the most generally accepted and scientifically supported models, along with research and outcome data, of treatment, recovery, relapse prevention, and continuing care for addictive disorders, including alcohol and substance use disorders. Treatment knowledge includes the ability to work effectively with families, significant others, social networks, and community systems in the treatment process and understanding the value of a multidisciplinary approach to treatment of addictive disorders, including alcohol and substance use disorders.

(c) **Application to practice:** Includes the ability to properly diagnose behavioral health disorders using appropriate assessment and testing instruments and placement criteria; stabilization to reduce negative effects of problematic behaviors; developing helping strategies and treatment levels of care based on the client's stage of readiness for change; cultural competency; and familiarity with medical and pharmacological resources for treatment.

(d) **Professional readiness:** Includes an understanding of diverse cultures; cultivation of a high level of self-awareness; ability to use critical thinking skills; adherence to ethical standards of conduct; ongoing use of clinical supervision and consultation; crisis management; and knowledge of the importance of prevention and recovery management.

(3) The primary practice dimensions of addiction counseling include the following competencies, as appropriate based on the level of certification or licensure and scope of practice:

(a) Clinical evaluation, including screening and assessment;

(b) Clinical intake, discharge, discharge planning, and referral;

(c) Treatment planning;

(d) Service coordination, including client advocacy, continuing care planning, and collaboration with other behavioral health professionals;

(e) Counseling of individuals, groups, families, couples, and significant others;

(f) Recovery management;

(g) Case management;

(h) Client, family, and community education;

(i) Documentation required for a clinical record;

(j) Professional and ethical practices;

(k) Clinical supervision; and

(l) Intervention.

(4) **Scope of practice - licensed addiction counselors.** Based on education, training, knowledge, and experience, the scope of practice of a licensed addiction counselor includes behavioral health counseling and may include the treatment of substance use disorders, addictive behavioral disorders, and co-occurring mental health disorders, including clinical evaluation and diagnosis, treatment planning, service coordination, case management, clinical documentation, professional and ethical responsibilities, education and psychotherapy with clients, family, and community, clinical supervisory responsibilities, and intervention.

(5) The practice of addiction counseling includes clinical supervision by a licensed addiction counselor of a person working toward licensure as a marriage and family therapist, pursuant to section 12-245-504 (1), or a licensed professional counselor, pursuant to section 12-245-604 (1), if the licensed addiction counselor has met the education requirements for a licensed marriage and family therapist or licensed professional counselor, or the equivalent, as specified in rules promulgated by the state board of marriage and family therapist examiners created in section 12-245-502 or the state board of licensed professional counselor examiners created in section 12-245-602, as applicable.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1292, § 1, effective October 1. **L. 2021:** (4) amended, (HB 21-1305), ch. 399, p. 2648, § 2, effective July 1. **L. 2024:** (5) added, (HB 24-1045), ch. 470, p. 3279, § 8, effective August 7.

Editor's note: This section is similar to former § 12-43-803 as it existed prior to 2019.

12-245-804. Requirements for licensure, certification, and registration - rules. (1) The board shall issue a license as an addiction counselor to an applicant who files an application in the form and manner required by the board, submits the fee required by the board pursuant to section 12-245-205, and submits evidence satisfactory to the board that the applicant:

(a) Is at least twenty-one years of age;

(b) Is not in violation of any provision of this article 245 or any rules promulgated by the board;

(c) Has completed a master's or doctoral degree in the behavioral health sciences from an accredited school, college, or university or an equivalent program as determined by the board;

(d) Demonstrates professional competence by:

(I) Passing the master addiction counselor examination administered by the National Association for Alcoholism and Drug Abuse Counselors, or an equivalent examination administered by a successor organization; and

(II) Passing a jurisprudence examination administered by the division;

(e) Has met the education requirements specified in the rules promulgated by the state board of human services in the department of human services pursuant to section 27-80-108 (1)(e.5);

(f) Has completed the number of clock hours of addiction-specific training, as specified by the board by rule, including training in evidence-based treatment approaches, clinical supervision, ethics, and co-occurring disorders; and

(g) Has completed at least two thousand direct clinical hours of clinically supervised work experience in the addiction field. The clinical supervision may be in person or telesupervision.

(1.5) Repealed.

(2) The board shall issue a certification as an addiction counselor to an applicant who files an application in the form and manner required by the board, submits the fee required by the board pursuant to section 12-245-205, and submits evidence satisfactory to the board that the applicant:

(a) Is at least eighteen years of age;

(b) Is not in violation of any provision of this article 245 or any rules promulgated by the board or by the state board of human services in the department of human services pursuant to section 27-80-108 (1)(e);

(c) Has met the requirements for certification as a certified addiction technician or a certified addiction specialist as specified in rules adopted pursuant to subsection (3) of this section and as specified in subsection (3.5) of this section.

(3) The state board of addiction counselor examiners shall promulgate rules for certification of addiction counselors; except that the state board of human services in the department of human services shall establish by rule education requirements for licensure and certification in accordance with section 27-80-108 (1)(e) and (1)(e.5).

(3.5) In the rules promulgated pursuant to subsection (3) of this section, the board shall require that:

(a) A certified addiction technician have:

(I) A high school diploma or its equivalent;

(II) Accrued a minimum of one thousand hours of supervised clinical experience hours over a minimum of six months, which includes hours accrued prior to the application for certification so long as the supervised clinical experience hours meet any additional criteria as defined by the board;

(III) Passed a jurisprudence examination as determined by the board; and

(IV) Passed the national certification addiction counselor level I examination administered by the National Association for Alcoholism and Drug Abuse Counselors, or an equivalent examination administered by a successor organization;

(b) A certified addiction specialist have:

(I) A bachelor's degree in a behavioral health concentration or human services equivalent;

(II) Accrued a minimum of three thousand hours of supervised clinic work hours over a minimum of eighteen months, which may include the one thousand hours required to be accrued for certification as a certified addiction technician;

(III) Passed a jurisprudence examination as determined by the board; and

(IV) Passed the national certification addiction counselor level II examination administered by the National Association for Alcoholism and Drug Abuse Counselors, or an equivalent examination administered by a successor organization.

(3.7) (a) The board shall register as an addiction counselor candidate a person who files an application for registration, accompanied by the fee required by section 12-245-205, who is not in violation of any provision of this article 245 or any rules promulgated by the board, and who:

(I) Submits evidence satisfactory to the board that the person has met the requirements of subsections (1)(a), (1)(b), and (1)(c) of this section.

(II) (Deleted by amendment, L. 2024.)

(b) An addiction counselor candidate registered pursuant to this subsection (3.7) is under the jurisdiction of the board. If the requirements of subsections (1)(d) to (1)(g) of this section are not met within three years after the date of registration as a candidate or within one year if the candidate holds an equivalent credential from another state, the registration of the addiction counselor candidate is subject to the renewal, reinstatement, and delinquency fee provisions specified in section 12-20-202. Prior to a second or subsequent renewal of an addiction counselor candidate registration, the registered addiction counselor candidate shall complete continuing professional competency hours to maintain the registered addiction counselor's registration as a registered addiction counselor candidate.

(c) On or before December 31, 2024, the board shall begin the rule-making process to promulgate rules that bring the rules pertaining to addiction counselors into alignment with this part 8, including:

(I) A requirement to take and pass the San Andreas jurisprudence examination to obtain an addiction counselor candidate registration;

(II) The renewal, reinstatement, and delinquency fee provisions specified in section 12-20-202; and

(III) The continuing professional competency requirements specified in subsection (3.7)(b) of this section.

(4) Nothing in this part 8 prevents members of other professions licensed under the laws of this state from rendering services within their scope of practice as set forth in the statutes regulating their professional practices so long as they do not represent themselves to be certified or licensed addiction counselors.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1294, § 1, effective October 1. **L. 2020:** (1)(d)(I), (1)(e), (1)(g), (2)(c), and (3) amended and (3.5) and (3.7) added, (HB 20-1206), ch. 304, p. 1539, §§ 38, 37, effective July 14. **L. 2021:** (1)(e), (1)(g), (3), IP(3.5)(a), (3.5)(a)(I), IP(3.5)(b), (3.5)(b)(I), and (3.5)(b)(II) amended and (1.5) added, (HB 21-1305), ch. 399, p. 2648, § 3, effective July 1. **L. 2024:** (3.7) amended, (SB 24-115), ch. 217, p. 1351, § 8, effective August 7.

Editor's note: (1) This section is similar to former § 12-43-804 as it existed prior to 2019.

(2) Subsection (1.5) provided for the repeal of subsection (1.5), effective March 1, 2022. (See L. 2021, p. 2648.)

12-245-805. Rights and privileges of certification and licensure - titles - clinical supervision. (1) Any person who possesses a valid, unsuspended, and unrevoked certificate as a certified addiction technician or certified addiction specialist has the right to practice addiction counseling under supervision or consultation as required by the rules of the state board of human services in the department of human services; a certified addiction specialist may supervise addiction counseling practice and may use the title "certified addiction counselor" and the abbreviations "CAC" or "CAS"; and a certified addiction technician may use the title "certified addiction counselor" and the abbreviations "CAC" or "CAT". No other person shall assume these titles or use these abbreviations on any work or media to indicate that the person using the title or abbreviation is a certified addiction counselor.

(2) Any person who possesses a valid, unsuspended, and unrevoked license as an addiction counselor has the right to practice addiction counseling and to use the title "licensed addiction counselor" or the abbreviation "LAC". No other person shall assume these titles or use these abbreviations on any work or media to indicate that the person using the title or abbreviation is a licensed addiction counselor.

(2.5) (a) Any person who possesses a valid, unsuspended, and unrevoked certificate as a certified addiction specialist may provide clinical supervision for certification purposes to a person working toward certification as a certified addiction technician or a certified addiction specialist.

(b) Any person who possesses a valid, unsuspended, and unrevoked license as an addiction counselor may provide clinical supervision for licensure or certification purposes to persons working toward licensure as a licensed addiction counselor, certification as an addiction specialist or technician, or other credential as authorized by this article 245 or by rule of the board.

(c) Notwithstanding any provision of this title 12 to the contrary, a licensed clinical social worker, pursuant to section 12-245-403 (5), a licensed marriage and family therapist, pursuant to section 12-245-503 (5), or a licensed professional counselor, pursuant to section 12-245-603 (3), who possesses a valid, unsuspended, and unrevoked license may provide clinical supervision of an individual working toward certification as a certified addiction technician or certified addiction specialist if the licensed clinical social worker, licensed marriage and family therapist, or licensed professional counselor has met the education requirements for a licensed addiction counselor, or the equivalent, as specified in rules promulgated by the state board of human services pursuant to section 27-80-108 (1)(e.5) or 27-50-107 (3)(e)(II), as applicable.

(3) (a) The practice of a certified addiction technician may include:

(I) Collection of biopsychosocial screening data;

(II) Service coordination and case management;

(III) Monitoring compliance with case management plans;

(IV) Skill-based education;

(V) Facilitating psychoeducation and therapy groups with appropriate training and clinical supervision and within a treatment or health facility licensed pursuant to section 25-1.5-103;

(VI) Client, family, and community addiction education; and

(VII) Referral and discharge resourcing and planning.

(b) The practice of a certified addiction specialist may include:

(I) Treating substance use and co-occurring disorders;

(II) Clinical assessments including diagnostic impression;

(III) Treatment planning;

(IV) Referral and discharge planning;

(V) Service coordination and case management;

(VI) Addiction counseling for individuals, families, and groups; and

(VII) Client, family, and community education and psychoeducation.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1295, § 1, effective October 1. **L. 2020:** (1) amended and (3) added, (HB 20-1206), ch. 304, p. 1541, § 39, effective July 14. **L. 2021:** (2.5) added and (3)(a)(V) amended, (HB 21-1305), ch. 399, p. 2649, § 4, effective July 1. **L. 2024:** (2.5)(c) added, (HB 24-1045), ch. 470, p. 3279, § 9, effective August 7.

Editor's note: This section is similar to former § 12-43-804.5 as it existed prior to 2019.

12-245-806. Continuing professional competency - rules - definition. (1) (a) In accordance with sections 12-245-803 and 12-245-804, the board issues a license or certificate to practice addiction counseling based on whether the applicant satisfies minimum educational and experience requirements that demonstrate professional competency to practice addiction counseling. After a license or a certificate is issued to an applicant, the licensed or certified addiction counselor shall maintain continuing professional competency to practice addiction counseling.

(b) The board, in consultation with stakeholders, shall adopt rules on or before March 1, 2022, establishing a continuing professional competency program that includes, at a minimum, the following elements:

(I) A self-assessment of the knowledge and skills of a licensed or certified addiction counselor seeking to renew or reinstate a license;

(II) Development, execution, and documentation of a learning plan based on the assessment; and

(III) Periodic demonstration of knowledge and skills through documentation of activities necessary to ensure at least minimal ability to safely practice the profession. Nothing in this subsection (1)(b)(III) requires a licensed or certified addiction counselor to retake any examination required pursuant to section 12-245-804 in connection with initial licensure or certification.

(c) A licensed or certified addiction counselor satisfies the continuing competency requirements of this section if the licensed or certified addiction counselor meets the continued professional competence requirements of one of the following entities:

(I) A state department, including continued professional competence requirements imposed through a contractual arrangement with a provider;

(II) An accrediting body recognized by the board; or

(III) An entity approved by the board.

(d) (I) After the program is established, a licensed or certified addiction counselor shall satisfy the requirements of the program in order to renew or reinstate a license or certificate to practice addiction counseling in San Andreas.

(II) The requirements of this section apply to individual addiction counselors who are licensed or certified pursuant to this part 8, and nothing in this section shall be construed to require a person who employs or contracts with a licensed or certified addiction counselor to comply with the requirements of this section.

(2) (a) Records of assessments or other documentation developed or submitted in connection with the continuing professional competency program are confidential and not subject to inspection by the public or discovery in connection with a civil action against a licensed or certified addiction counselor. The records or documents shall be used only by the board for purposes of determining whether a licensed or certified addiction counselor is maintaining continuing professional competency to engage in the profession.

(b) Subject to the requirements of subsection (2)(a) of this section, nothing in this section shall be construed to restrict the discovery of information or documents that are otherwise discoverable under the San Andreas rules of civil procedure in connection with a civil action against a licensed or certified addiction counselor.

(3) As used in this section, "continuing professional competency" means the ongoing ability of a licensed or certified addiction counselor to learn, integrate, and apply the knowledge, skill, and judgment to practice as an addiction counselor according to generally accepted industry standards and professional ethical standards in a designated role and setting.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1295, § 1, effective October 1. **L. 2020:** (1)(a), IP(1)(b), (1)(b)(I), (1)(b)(III), IP(1)(c), (1)(d), (2)(a), and (3) amended, (HB 20-1206), ch. 304, p. 1542, § 40, effective July 14. **L. 2021:** IP(1)(b) amended, (HB 21-1305), ch. 399, p. 2649, § 5, effective July 1.

Editor's note: This section is similar to former § 12-43-805 as it existed prior to 2019.

ARTICLE 250

Naturopathic Doctors

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 250 was numbered as article 37.3 of this title 12 prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

12-250-101. Short title. The short title of this article 250 is the "Naturopathic Doctor Act".

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1297, § 1, effective October 1.

Editor's note: This section is similar to former § 12-37.3-101 as it existed prior to 2019.

12-250-102. Applicability of common provisions. Articles 1, 20, and 30 of this title 12 apply, according to their terms, to this article 250.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1297, § 1, effective October 1.

12-250-103. Definitions. As used in this article 250, unless the context otherwise requires:

(1) "ACIP" means the advisory committee on immunization practices to the centers for disease control and prevention in the United States department of health and human services or its successor entity.

(2) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or any other method.

(3) "Advisory committee" means the naturopathic medicine advisory committee created in section 12-250-104.

(4) "Approved clinical training" means clinical training in naturopathic medicine in an inpatient or outpatient setting that has been approved by the director. "Approved clinical training" may include components of allopathic medicine in addition to naturopathic medicine.

(5) "Approved naturopathic medical college" means:

(a) A naturopathic medical education program in the United States or Canada that grants the degree of doctor of naturopathic medicine or doctor of naturopathy and that:

(I) Is approved by the director;

(II) Offers graduate-level, full-time didactic and supervised clinical training; and

(III) Is accredited or has achieved candidacy status for accreditation by the Council on Naturopathic Medical Education or an equivalent accrediting body for naturopathic medical programs recognized by the United States department of education; or

(b) Any other college or program approved by the director and accredited by the Council on Naturopathic Medical Education or its successor entity.

(6) "Continuing professional competency" means the ongoing ability of a naturopathic doctor to learn, integrate, and apply the knowledge, skill, and judgment to practice as a naturopathic doctor according to generally accepted standards and professional ethical standards.

(7) "Dispense" means the preparation, in a suitable container appropriately labeled for subsequent administration to or use by a patient, of a medicine that a naturopathic doctor is authorized under this article 250 to obtain.

(8) "Homeopathic preparations" means medicines prepared according to the most current version of the Homeopathic Pharmacopoeia of the United States/Revision Service.

(9) "Minor office procedures" means:

(a) The repair, care, and suturing of superficial lacerations and abrasions;

(b) The removal of foreign bodies located in superficial tissue, excluding the ear or eye; and

(c) Obtaining and administering saline, sterile water, topical antiseptics, and local anesthetics, including local anesthetics with epinephrine, in connection with a procedure described in subsection (9)(a) or (9)(b) of this section.

(10) "Natural health-care services" or "natural health care" includes, but is not limited to:

(a) Healing practices using food; food extracts; over-the-counter dietary supplements, including vitamins, herbs, minerals, and enzymes; nutrients; homeopathic remedies and preparations; the physical forces of heat, cold, water, touch, sound, and light; and mind-body and energetic healing practices;

(b) Education, counseling, or advice regarding healing practices described in subsection (10)(a) of this section and their effects on the structure and functions of the human body; and

(c) Services or care as may be further defined by the director by rule.

(11) "Naturopathic doctor" or "registrant" means a person who is registered by the director to practice naturopathic medicine pursuant to this article 250.

(12) "Naturopathic formulary" means the list of nonprescription classes of medicines determined by the director that naturopathic doctors use in the practice of naturopathic medicine. "Naturopathic formulary" includes any prescription substance or device that is authorized under this article 250.

(13) (a) "Naturopathic medicine", as performed by a naturopathic doctor, means a system of health care for the prevention, diagnosis, evaluation, and treatment of injuries, diseases, and conditions of the human body through the use of education, nutrition, naturopathic preparations, natural medicines and other therapies, and other modalities that are designed to support or supplement the human body's own natural self-healing processes.

(b) "Naturopathic medicine" includes naturopathic physical medicine, which consists of naturopathic manual therapy, the therapeutic use of the physical agents of air, water, heat, cold, sound, light, touch, and electromagnetic nonionizing radiation, and the physical modalities of electrotherapy, diathermy, ultraviolet light, ultrasound, hydrotherapy, and exercise.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1297, § 1, effective October 1.

Editor's note: This section is similar to former § 12-37.3-102 as it existed prior to 2019.

12-250-104. Naturopathic medicine advisory committee - creation - membership - duties. (1) (a) The naturopathic medicine advisory committee is hereby created in the department as the entity responsible for advising the director in the regulation of the practice of naturopathic medicine by naturopathic doctors and the implementation of this article 250.

(b) The advisory committee consists of nine members appointed by the director as follows:

(I) Three members who are naturopathic doctors;

(II) Three members who are doctors of medicine or osteopathy licensed pursuant to article 240 of this title 12, one of whom is a pediatrician and another of whom is a member of a statewide multispecialty medical society;

(III) One member who is a pharmacist licensed pursuant to article 280 of this title 12; and

(IV) Two members from the public at large. The director shall make reasonable efforts to appoint public members who are or have been consumers of naturopathic medicine.

(c) (I) Each member of the advisory committee holds office until the expiration of the member's appointed term or until a successor is duly appointed. Except as specified in subsection (1)(c)(II) of this section, the term of office of each member is four years, and an advisory committee member shall not serve more than two consecutive four-year terms. The director shall fill a vacancy occurring on the advisory committee, other than by expiration of a term, by appointment for the unexpired term of the member.

(II) To ensure staggered terms of office, the initial term of office of one of the naturopathic doctor members, the pharmacist member, and one of the members representing the public is two years. These members are eligible to serve one additional four-year term of office. On and after the expiration of these members' terms, the term of office of persons appointed to these positions on the advisory committee is as described in subsection (1)(c)(I) of this section, commencing on January 1 of the applicable year.

(d) The director may remove any advisory committee member for misconduct, incompetence, or neglect of duty.

(2) The advisory committee shall meet at least once each year to:

(a) Advise the director in the administration and enforcement of this article 250 and rules adopted under this article 250;

(b) Discuss issues of importance to naturopathic doctors and their patients; and

(c) (I) Review the naturopathic formulary specified in section 12-250-106 (1)(c)(I); and

(II) Make recommendations to the director on whether there should be additions, other than controlled substances, to the naturopathic formulary. Possible additions may include only biological substances including vitamins, minerals, nutritive substances, extracts, and their products and residues.

(3) Members of the advisory committee shall not receive compensation for their services but are entitled to reimbursement for actual and necessary expenses they incur in performing their duties.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1299, § 1, effective October 1. **L. 2020:** (1)(b)(II) and (2) amended, (HB 20-1212), ch. 228, p. 1114, § 4, effective July 2.

Editor's note: This section is similar to former § 12-37.3-103 as it existed prior to 2019.

12-250-105. Director powers and duties - rules. (1) In addition to any other powers and duties granted or imposed on the director under this article 250 or articles 20 and 30 of this title 12, the director shall:

(a) Adopt rules pursuant to section 12-20-204;

(b) Establish the form and manner in which applicants are to apply for a new registration or to renew a registration;

(c) Receive, review, and approve or deny applications for registrations and issue and renew registrations under this article 250;

(d) Conduct investigations, hold hearings, take evidence, and pursue disciplinary actions pursuant to sections 12-20-403, 12-20-404, and 12-250-113 with respect to complaints against

naturopathic doctors when the director has reasonable cause to believe that a naturopathic doctor is violating this article 250 or rules adopted pursuant to this article 250.

(e) Perform other functions and duties necessary to administer this article 250.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1300, § 1, effective October 1.

Editor's note: This section is similar to former § 12-37.3-104 as it existed prior to 2019.

12-250-106. Practice of naturopathic medicine by naturopathic doctors - exclusions - protected activities - definition - rules. (1) The practice of naturopathic medicine by a naturopathic doctor includes the following:

(a) The prevention and treatment of human injury, disease, or conditions through education or dietary or nutritional advice and the promotion of healthy ways of living;

(b) The use of physical examinations and the ordering of clinical, laboratory, and radiological diagnostic procedures from licensed or certified health-care facilities or laboratories for the purpose of diagnosing and evaluating injuries, diseases, and conditions in the human body;

(c) (I) Obtaining, dispensing, administering, ordering, or prescribing, as specified, medicines listed in the naturopathic formulary, which includes:

(A) Epinephrine to treat anaphylaxis;

(B) Barrier contraceptives, excluding intrauterine devices;

(C) Oxygen, but only for emergency use;

(D) Vitamins B6 and B12;

(E) Substances that are regulated by the federal food and drug administration but that do not require a prescription order to be dispensed;

(F) Vaccines, in accordance with the ACIP guidelines, for patients who are at least eighteen years of age; and

(G) Any additions to the naturopathic formulary as determined by the director by rule, limited to biological substances including vitamins, minerals, nutritive substances, extracts, and their products and residues.

(II) A naturopathic doctor may obtain medications described in subsection (1)(c)(I) of this section from a manufacturer, wholesaler, or in-state prescription drug outlet registered or licensed by the state board of pharmacy pursuant to article 280 of this title 12. An entity that provides a medication described in subsection (1)(c)(I) of this section to a naturopathic doctor in accordance with this section, and that relies in good faith upon the registration information provided by the naturopathic doctor, is not subject to liability for providing the medication.

(d) Performing minor office procedures.

(2) A naturopathic doctor shall not:

(a) Prescribe, dispense, administer, or inject a controlled substance or device identified in the federal "Controlled Substances Act", 21 U.S.C. sec. 801 et seq., as amended;

(b) Perform surgical procedures, including surgical procedures using a laser device;

(c) Use general or spinal anesthetics, other than topical anesthetics;

(d) Administer ionizing radioactive substances for therapeutic purposes;

(e) Treat a child who is less than two years of age, unless the naturopathic doctor:

(I) Provides to the parent or legal guardian of the child a copy of the most recent immunizations schedule recommended by the ACIP and recommends that the parent or legal guardian follow the immunizations schedule;

(II) (A) On or after March 26, 2015, except as provided in subsection (2)(e)(II)(B) of this section, demonstrates in each year in which the naturopathic doctor treats a child under two years of age, successful completion of five hours per year of education or practicum training solely related to pediatrics in accordance with continuing professional competency requirements approved by the director pursuant to section 12-250-109, which includes subject matter related to recognizing a sick infant and when to refer an infant for more intensive care.

(B) If, pursuant to subsection (2)(f) of this section, a naturopathic doctor treats children who are two years of age or older but less than eight years of age and successfully completes three hours per year of education or practicum training solely related to pediatrics as required by subsection (2)(f)(II) of this section, the naturopathic doctor is required only to successfully complete an additional two hours per year of education or practicum training solely related to pediatrics to comply with the requirements of subsection (2)(e)(II)(A) of this section.

(III) (A) Develops and executes a written collaborative agreement with a licensed physician who is a pediatrician or family physician, which agreement includes the duties and responsibilities of each party as part of the collaborative agreement according to each party's standard of care and practice act, a process for consulting with and referring to a licensed physician to facilitate the effective treatment of children under two years of age, and other provisions as may be established by the director by rule. The naturopathic doctor and the licensed physician shall keep the written collaborative agreement on file and, upon request by the director, for naturopathic doctors, or by the San Andreas medical board, for licensed physicians, shall provide a copy of the agreement to the director or board, as applicable.

(B) The naturopathic doctor shall provide to the director the name and license number of the licensed physician and shall ensure that the information filed with the director is current. The director shall make the information available to the San Andreas medical board and the naturopathic medicine advisory committee.

(C) Nothing in this subsection (2)(e)(III) permits the independent practice of medicine, as defined in section 12-240-107 (1) and (2), by a naturopathic doctor.

(D) Nothing in this subsection (2)(e)(III): Limits the ability of a naturopathic doctor to make an independent judgment; requires supervision by a licensed physician; precludes the use of professional judgment or variation according to the needs of the child under two years of age; imposes liability on a licensed physician, in developing or signing a collaborative agreement, for the actions of the naturopathic doctor in treating a child under two years of age; imposes liability on a naturopathic doctor, in developing or signing a collaborative agreement, for the actions of the licensed physician in consulting regarding the treatment of a child less than two years of age; or requires the naturopathic doctor and licensed physician to be practicing in the same community or in close proximity to each other in order to enter into a collaborative agreement.

(IV) Requires the child's parent or legal guardian to sign an informed consent that:

(A) Discloses that the naturopathic doctor is registered pursuant to this article 250;

(B) Discloses that the naturopathic doctor is not a physician licensed pursuant to article 240 of this title 12;

(C) Recommends that the child have a relationship with a licensed pediatric health-care provider; and

(D) If the child has a relationship with a licensed pediatric health-care provider, requests permission from the parent or legal guardian for the naturopathic doctor to attempt to develop and maintain a collaborative relationship with the licensed pediatric health-care provider, as defined by director rules, or, if the child does not have a relationship with a licensed pediatric health-care provider, on the child's first visit, refers the child to at least one licensed pediatric health-care provider, physician, or advanced practice registered nurse who cares for pediatric patients to provide a medical home for the child, with ongoing communication and relationship between the naturopathic doctor and the licensed pediatric health-care provider, physician, or advanced practice registered nurse; and

(V) Complies with rules adopted by the director regarding the training required by subsection (2)(e)(II) of this section and referral to and communication with licensed pediatric health-care providers, physicians, or advanced practice registered nurses as required by subsection (2)(e)(IV)(D) of this section to ensure the safety of clients who are under two years of age;

(f) Treat a child who is two years of age or older but less than eight years of age, unless the naturopathic doctor:

(I) Provides to the parent or legal guardian of the child a copy of the most recent immunizations schedule recommended by the ACIP and recommends that the parent or legal guardian follow the immunizations schedule;

(II) Demonstrates successful completion of three hours per year of education or practicum training solely related to pediatrics in accordance with continuing professional competency requirements approved by the director pursuant to section 12-250-109; and

(III) Requires the child's parent or legal guardian to sign an informed consent that:

(A) Discloses that the naturopathic doctor is registered pursuant to this article 250;

(B) Discloses that the naturopathic doctor is not a physician licensed pursuant to article 240 of this title 12;

(C) Recommends that the child have a relationship with a licensed pediatric health-care provider; and

(D) If the child has a relationship with a licensed pediatric health-care provider, requests permission from the parent or legal guardian for the naturopathic doctor to attempt to develop and maintain a collaborative relationship with the licensed pediatric health-care provider, as defined by director rules;

(g) Engage in or perform the practice of medicine, surgery, or any other form of healing except as authorized by this article 250;

(h) Practice obstetrics;

(i) Perform spinal adjustment, manipulation, or mobilization, but this subsection (2)(i) does not prohibit a naturopathic doctor from practicing naturopathic physical medicine as described in section 12-250-103 (13)(b); or

(j) Recommend the discontinuation of, or counsel against, a course of care, including a prescription drug that was recommended or prescribed by another health-care practitioner licensed in this state, unless the naturopathic doctor consults with the health-care practitioner who recommended the course of care.

(3) (a) A naturopathic doctor has the same authority and is subject to the same responsibilities as a licensed physician under public health laws pertaining to reportable diseases and conditions, communicable disease control and prevention, and recording of vital statistics

and health and physical examinations, subject to the limitations of the scope of practice of a naturopathic doctor as specified in this article 250.

(b) Before conducting an initial examination of a patient, a naturopathic doctor shall obtain the patient's informed consent to the examination, evidenced by a written statement in a form prescribed by the director and signed by both the patient and the naturopathic doctor. The statement must:

(I) Disclose that the naturopathic doctor is not a medical doctor or physician licensed under article 240 of this title 12;

(II) Recommend that the patient have a relationship with a medical doctor or licensed physician;

(III) Indicate that the naturopathic doctor will attempt to develop and maintain a collaborative relationship with the patient's licensed physician, if the patient has a relationship with a licensed physician; and

(IV) Disclose that the naturopathic doctor is registered and not licensed.

(c) A naturopathic doctor shall communicate and cooperate with a patient's other health-care providers, if any, to ensure that the patient receives coordinated care.

(d) A naturopathic doctor shall refer a patient to another health-care professional if the patient's needs are beyond the naturopathic doctor's scope of knowledge and practice.

(4) This article 250 does not prevent or restrict the practice, services, or activities of:

(a) A person who is licensed, certified, or registered to practice a profession or occupation pursuant to this title 12 and who engages in activities that are within the lawful scope of practice for the profession or occupation for which the person is licensed, certified, or registered;

(b) A person who practices natural health care, provides natural health-care services, or advises and educates in the use of natural health-care products, as long as the person does not:

(I) Diagnose injuries or diseases;

(II) Prescribe medicines as authorized for registrants pursuant to subsection (1)(c) of this section or a prescription drug or controlled substance or device identified in the federal "Controlled Substances Act", 21 U.S.C. sec. 801 et seq., as amended; or

(III) Perform minor office procedures as authorized for registrants pursuant to subsection (1)(d) of this section;

(c) A person who sells vitamins, health foods, dietary supplements, herbs, or other natural products, if not otherwise prohibited by state or federal law, and who sells or provides information about the products;

(d) A person who provides truthful and nonmisleading information regarding natural health-care products or services;

(e) A person employed by the federal government who practices naturopathic medicine while the person is engaged in the performance of his or her duties;

(f) A person who is licensed or otherwise authorized to practice as a naturopathic doctor in another state or district in the United States who is consulting with a naturopathic doctor in this state as long as the consultation is limited to examination, recommendation, or testimony in litigation;

(g) A student enrolled in an approved naturopathic medical college who practices naturopathic medicine if the performance of services is pursuant to a course of instruction or

assignments from and under the supervision of an instructor who is a naturopathic doctor or a licensed professional in the field in which he or she is providing instruction;

(h) A person who administers a domestic or family remedy to oneself or a member of his or her immediate family based on religious or health beliefs; or

(i) A person who renders aid in an emergency when no fee or other consideration of value for the services is charged, received, expected, or contemplated.

(5) Except as provided in subsection (4) of this section, a person who is not registered under this article 250 shall not:

(a) Diagnose injury, disease, ailment, infirmity, deformity, pain, or other condition of the human body;

(b) Dispense, administer, order, or prescribe medicines as authorized for registrants pursuant to subsection (1)(c) of this section; or

(c) Use the title "naturopathic doctor", "doctor of naturopathy", the abbreviation "N.D.", or any other title that implies the person is registered or licensed as a naturopathic doctor.

(6) Many therapies used by naturopathic doctors, such as the use of nutritional supplements, herbs, foods, homeopathic preparations, and physical forces such as heat, cold, water, touch, and light, are not the exclusive privilege of naturopathic doctors, and this article 250 does not prohibit the use or practice of those therapies by a person who is not registered under this article 250 to practice naturopathic medicine.

(7) As used in this section, "licensed pediatric health-care provider" means a licensed physician, an advanced practice registered nurse, or a certified midwife who treats children.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1300, § 1, effective October 1. **L. 2020:** (1)(c)(I) and (5)(c) amended, (HB 20-1212), ch. 228, p. 1114, § 5, effective July 2. **L. 2023:** (7) amended, (SB 23-167), ch. 261, p. 1545, § 48, effective May 25.

Editor's note: This section is similar to former § 12-37.3-105 as it existed prior to 2019.

12-250-107. Registration required - qualifications - examination - registration by endorsement - rules. (1) Effective June 1, 2014, a person shall not practice as a naturopathic doctor in this state without a registration.

(2) An applicant for a registration to practice as a naturopathic doctor in this state shall submit an application to the director in a form and manner determined by the director by rule, accompanied by the fee required pursuant to section 12-20-105. The director shall issue a registration to practice as a naturopathic doctor to an applicant upon receipt of satisfactory proof that the applicant:

(a) Is at least twenty-one years of age and of good moral character;

(b) Has obtained a baccalaureate degree from an accredited educational institution or documented experience that provides the same kind, amount, and level of knowledge as a baccalaureate degree, as determined by the director;

(c) Has graduated from and holds a doctor of naturopathic medicine or doctor of naturopathy degree from an approved naturopathic medical college;

(d) Has successfully passed either a director-approved examination or a comprehensive competency-based national naturopathic licensing examination administered by the North

American Board of Naturopathic Examiners or a nationally recognized, director-approved successor entity, as determined by the director by rule; and

(e) Has not had a license or other authorization to practice as a naturopathic doctor or other health-care license, registration, or certification denied, revoked, or suspended by San Andreas or any other jurisdiction for reasons that relate to the applicant's ability to skillfully and safely practice naturopathic medicine, unless the license, registration, or certification is reinstated to good standing by San Andreas or another jurisdiction.

(3) The director may issue a registration by endorsement to engage in the practice of naturopathic medicine to an applicant who satisfies the requirements of the occupational credential portability program.

(4) The director may determine, by rule, the qualifications for registration under this article 250 for a person who satisfies the requirements of subsections (2)(a), (2)(b), and (2)(e) of this section but does not satisfy the requirements for registration under subsection (2)(c) or (2)(d) of this section and who is not licensed, certified, or registered to practice a profession or occupation under this title 12 or the laws of any other jurisdiction in the United States. The director's rules may require qualifications the director deems appropriate and may include documented evidence that the person:

(a) Has completed a postgraduate level didactic and supervised clinical educational program from an accredited educational institution, which program is substantially equivalent to the education requirements set forth in subsection (2)(c) of this section, as determined by the director by rule;

(b) Has passed a national examination in naturopathic medicine that is substantially equivalent to the examination required in subsection (2)(d) of this section, as determined by the director by rule; and

(c) Has at least ten years of related professional experience.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1306, § 1, effective October 1. **L. 2020:** (3) amended, (HB 20-1326), ch. 126, p. 540, § 29, effective June 25.

Editor's note: This section is similar to former § 12-37.3-106 as it existed prior to 2019.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-250-108. Registration renewal or reinstatement - fees. A registration issued pursuant to this article 250 is subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2). A person whose registration expires is subject to the penalties provided in this article 250 or section 12-20-202 (1).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1307, § 1, effective October 1.

Editor's note: This section is similar to former § 12-37.3-107 as it existed prior to 2019.

12-250-109. Continuing professional competency - rules. (1) (a) A naturopathic doctor shall maintain continuing professional competency to practice naturopathic medicine.

(b) The director shall adopt rules establishing a continuing professional competency program that includes, at a minimum, the following elements:

(I) A self-assessment of the knowledge and skills of a naturopathic doctor seeking to renew or reinstate a registration;

(II) Development, execution, and documentation of a learning plan based on the assessment; and

(III) Periodic demonstration of knowledge and skills through documentation of activities necessary to ensure continuing competency in the profession; except that a naturopathic doctor need not retake any examination required by section 12-250-107 (2)(d) for initial registration.

(c) The director shall establish that a naturopathic doctor satisfies the continuing competency requirements of this section if the naturopathic doctor meets the continuing professional competency requirements of one of the following entities:

(I) A state department, including continuing professional competency requirements imposed through a contractual arrangement with a provider;

(II) An accrediting body recognized by the director; or

(III) An entity approved by the director.

(d) (I) After the program is established, a naturopathic doctor shall satisfy the requirements of the program in order to renew or reinstate a registration to practice naturopathic medicine.

(II) The requirements of this section apply to individual naturopathic doctors, and nothing in this section requires a person who employs or contracts with a naturopathic doctor to comply with the requirements of this section.

(2) Records of assessments or other documentation developed or submitted in connection with the continuing professional competency program are confidential and not subject to inspection by the public or discovery in connection with a civil action against a naturopathic doctor. Neither the director nor any other person shall use the records or documents unless used by the director to determine whether a naturopathic doctor is maintaining continuing professional competency to engage in the profession.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1308, § 1, effective October 1.

Editor's note: This section is similar to former § 12-37.3-108 as it existed prior to 2019.

12-250-110. Compliance with transparency requirements. A naturopathic doctor shall comply with section 12-30-102 regarding the disclosure of information to the director.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1309, § 1, effective October 1.

Editor's note: This section is similar to former § 12-37.3-109 as it existed prior to 2019.

12-250-111. Persons entitled to practice as naturopathic doctors - title protection for naturopathic doctors. (1) A person shall not hold himself or herself out as a naturopathic doctor or use any of the titles or initials referred to in subsection (2) of this section unless the person is registered as a naturopathic doctor pursuant to this article 250.

(2) A naturopathic doctor may use the title "naturopathic doctor", or "doctor of naturopathy", or the initials "N.D."

(3) A naturopathic doctor shall qualify any specialty services provided to the public with "naturopathic" or "naturopath".

(4) A naturopathic doctor shall not use:

(a) The term "physician" in describing the naturopathic doctor's registered naturopathic medicine practice in this state;

(b) The abbreviations "NMD" or "N.M.D.";

(c) The term "naturopathic medical doctor".

(5) Nothing in this section prevents a naturopathic doctor from disclosing membership in national organizations or associations of naturopathic physicians unless the disclosure is false, misleading, or deceptive.

(6) Nothing in this section prevents a person from using the term "doctor" or the title "Dr." if he or she satisfies the requirements of section 6-1-707 (1)(a).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1309, § 1, effective October 1.

Editor's note: This section is similar to former § 12-37.3-110 as it existed prior to 2019.

12-250-112. Disclosures - record keeping. (1) A naturopathic doctor shall provide the following information in writing to each patient in a format required by the director:

(a) The naturopathic doctor's name, business address, and telephone number;

(b) The nature of the services to be provided;

(c) A statement that naturopathic doctors are registered by the state to practice naturopathic medicine under the "Naturopathic Doctor Act";

(d) The prohibitions specified in section 12-250-106 (2);

(e) The states in which the naturopathic doctor holds an active license or registration; and

(f) How to file a complaint against a naturopathic doctor.

(2) A naturopathic doctor shall obtain a written acknowledgment from the patient stating that the patient has been provided the information described in subsection (1) of this section. The naturopathic doctor shall retain the acknowledgment for seven years after the date on which the last services were provided to the patient.

(3) If a naturopathic doctor treats any patient who is seeking treatment for cancer, the naturopathic doctor shall recommend to the patient that the patient consult with a licensed physician specializing in oncology and document the recommendation in writing.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1309, § 1, effective October 1.

Editor's note: This section is similar to former § 12-37.3-111 as it existed prior to 2019.

12-250-113. Grounds for discipline - disciplinary actions authorized - procedures - definitions. (1) The director may take disciplinary or other action as specified in section 12-20-404 against a naturopathic doctor for any of the following acts or omissions:

(a) Violating, or aiding or abetting another in the violation of, this article 250, an applicable provision of article 20 or 30 of this title 12, or any rule promulgated by the director pursuant to this article 250;

(b) Falsifying information in any application, attempting to obtain or obtaining a registration by fraud, deceit, or misrepresentation, or aiding or abetting such act;

(c) Engaging in an act or omission that does not meet generally accepted standards of practice of naturopathic medicine or of safe care for patients, whether or not actual injury to a patient is established;

(d) Habitual or excessive use or abuse of alcohol, a habit-forming drug, or a controlled substance as defined in section 18-18-102 (5);

(e) Failing to refer a patient to an appropriate health-care professional when the services required by the patient are beyond the level of competence of the naturopathic doctor or beyond the scope of naturopathic medicine practice;

(f) Violation of a law or regulation governing the practice of naturopathic medicine in another jurisdiction;

(g) Falsifying, repeatedly failing to make essential entries in, or repeatedly making incorrect essential entries in patient records;

(h) Conviction of a felony, an offense of moral turpitude, or a crime that would constitute a violation of this article 250. For purposes of this subsection (1)(h), "conviction" includes the entry of a plea of guilty or nolo contendere or the imposition of a deferred sentence or judgment.

(i) Advertising through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that the naturopathic doctor will perform any act prohibited by this article 250;

(j) Engaging in a sexual act with a patient during the course of patient care or within six months immediately following the written termination of the professional relationship with the patient. As used in this subsection (1)(j), "sexual act" means sexual contact, sexual intrusion, or sexual penetration, as those terms are defined in section 18-3-401.

(k) Committing abuse of health insurance, as prohibited by section 18-13-119;

(l) Advertising through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that the naturopathic doctor will perform any act prohibited by section 18-13-119 (3);

(m) Violating a valid order of the director;

(n) Failing to report to the director, within thirty days after an adverse action, that an adverse action has been taken against the naturopathic doctor by a licensing agency in another state or country, a peer review body, a health-care institution, a professional or naturopathic medical society or association, a governmental agency, a law enforcement agency, or a court for acts or conduct that would constitute grounds for disciplinary or adverse action as described in this article 250;

(o) Failing to report to the director, within thirty days:

(I) The surrender of a license or other authorization to practice as a naturopathic doctor in another state or jurisdiction; or

(II) The surrender of membership on a medical staff or in a naturopathic medical or professional association or society while under investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct that would constitute grounds for action as described in this article 250;

(p) (I) Failing to notify the director of a physical illness, physical condition, or behavioral, mental health, or substance use disorder that affects the naturopathic doctor's ability to treat patients with reasonable skill and safety or that may endanger the health or safety of persons under his or her care;

(II) Failing to act within the limitations created by a physical illness, physical condition, or behavioral, mental health, or substance use disorder that renders the naturopathic doctor unable to practice naturopathic medicine with reasonable skill and safety or that may endanger the health or safety of persons under his or her care; or

(III) Failing to comply with the limitations agreed to under a confidential agreement entered pursuant to sections 12-30-108 and 12-250-118;

(q) Failing to timely respond to a complaint filed against the naturopathic doctor;

(r) Failing to develop a written plan for the security of patient medical records in accordance with section 12-250-117;

(s) Refusing to submit to a physical or mental examination when so ordered by the director pursuant to section 12-250-119;

(t) Failing to obtain and continually maintain professional liability insurance as required by section 12-250-115.

(2) In addition to or as an alternative to the discipline authorized by subsection (1) of this section, the director may assess an administrative fine of up to five thousand dollars against a naturopathic doctor who commits any of the acts or omissions described in subsection (1) of this section.

(3) The director shall conduct any disciplinary proceeding in accordance with sections 12-20-403, 24-4-104, and 24-4-105. A final decision of the director or an administrative law judge is subject to judicial review in accordance with section 12-20-408.

(4) The director may accept as prima facie evidence of grounds for disciplinary action any disciplinary action taken against a naturopathic doctor by another jurisdiction if the violation that prompted the disciplinary action would be grounds for disciplinary action under this article 250.

(5) A person providing copies of records subpoenaed pursuant to section 12-20-403 (2) shall prepare the copies from the original record, deleting the name of the patient and instead identifying the patient by a numbered code. Upon certification by the custodian that the copies are true and complete except for the patient's name, the copies are deemed authentic, subject to the right to inspect the originals for the limited purpose of ascertaining the accuracy of the copies. The copies are not confidential, and the director or custodian of the records and their authorized employees are not liable for furnishing or using the copies in accordance with this section.

(6) The director may issue a letter of admonition to a naturopathic doctor under the circumstances specified in and in accordance with section 12-20-404 (4).

(7) The director may send a registrant a confidential letter of concern under the circumstances specified in section 12-20-404 (5).

(8) The director may issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1310, § 1, effective October 1.

Editor's note: This section is similar to former § 12-37.3-112 as it existed prior to 2019.

12-250-114. Unauthorized practice - penalties. A person who practices or offers or attempts to practice as a naturopathic doctor without an active registration issued under this article 250 is subject to penalties pursuant to section 12-20-407 (1)(c).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1315, § 1, effective October 1.

Editor's note: This section is similar to former § 12-37.3-113 as it existed prior to 2019.

12-250-115. Professional liability insurance required - vicarious liability. (1) It is unlawful for a person to practice as a naturopathic doctor in this state unless the person is covered by professional liability insurance in an amount not less than one million dollars.

(2) Professional liability insurance required by this section must cover all acts within the scope of practice of a naturopathic doctor.

(3) A naturopathic doctor is liable for his or her acts or omissions in the performance of naturopathic medicine.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1315, § 1, effective October 1.

Editor's note: This section is similar to former § 12-37.3-114 as it existed prior to 2019.

12-250-116. Judgments and settlements - reporting. In accordance with section 10-1-125.5, a naturopathic doctor's malpractice insurance carrier shall report to the director information relating to a final judgment or settlement against the naturopathic doctor for malpractice. The director shall review the information and investigate and, as appropriate, take disciplinary or other action against the naturopathic doctor.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1315, § 1, effective October 1.

Editor's note: This section is similar to former § 12-37.3-114.5 as it existed prior to 2019.

12-250-117. Protection of medical records - registrant's obligations - verification of compliance - noncompliance grounds for discipline - rules. (1) Each naturopathic doctor shall develop a written plan to ensure the security of patient medical records. The plan must address at least the following:

(a) The storage and proper disposal of patient medical records;

(b) The disposition of patient medical records in the event the naturopathic doctor dies, retires, or otherwise ceases to practice or provide naturopathic medical care to patients; and

(c) The method by which patients may access or obtain their medical records promptly if any of the events described in subsection (1)(b) of this section occurs.

(2) Upon initial registration under this article 250, the applicant or registrant shall attest to the director that he or she has developed a plan in compliance with this section.

(3) A naturopathic doctor shall inform each patient in writing of the method by which the patient may access or obtain his or her medical records if an event described in subsection (1)(b) of this section occurs.

(4) The director may adopt rules reasonably necessary to implement this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1315, § 1, effective October 1.

Editor's note: This section is similar to former § 12-37.3-115 as it existed prior to 2019.

12-250-118. Confidential agreement to limit practice. Section 12-30-108 concerning confidential agreements to limit practice applies to this article 250.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1316, § 1, effective October 1.

Editor's note: This section is similar to former § 12-37.3-116 as it existed prior to 2019.

12-250-119. Mental and physical examination of registrants. (1) If the director has reasonable cause to believe that a registrant is unable to practice with reasonable skill and safety, the director may require the registrant to take a mental or physical examination by a health-care provider designated by the director. If the registrant refuses to undergo a mental or physical examination, unless due to circumstances beyond the registrant's control, the director may suspend the registrant's registration until the results of the examination are known and the director has made a determination of the registrant's fitness to practice. The director shall proceed with an order for examination and determination in a timely manner.

(2) The director shall include in an order issued under subsection (1) of this section the basis of the director's reasonable cause to believe that the registrant is unable to practice with reasonable skill and safety. For the purposes of a disciplinary proceeding authorized by this article 250, the registrant is deemed to waive all objections to the admissibility of the examining health-care provider's testimony or examination reports on the ground that the testimony and reports are privileged communications.

(3) The registrant may submit to the director testimony or examination reports from a health-care provider chosen by the registrant pertaining to the condition that the director alleges

may preclude the registrant from practicing with reasonable skill and safety. The director may consider testimony and examination reports submitted by the registrant in conjunction with, but not in lieu of, testimony and examination reports of the health-care provider designated by the director.

(4) A person shall not use the results of any mental or physical examination ordered by the director as evidence in any proceeding other than one before the director. The examination results are not public records and are not available to the public.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1317, § 1, effective October 1.

Editor's note: This section is similar to former § 12-37.3-117 as it existed prior to 2019.

12-250-120. Inactive registration - rules. A naturopathic doctor may request that the director inactivate or activate the naturopathic doctor's registration. The director shall promulgate rules governing the activation and inactivation of registrations. Notwithstanding any law to the contrary, the director's rules may limit the applicability of statutory requirements for maintaining professional liability insurance and continuing professional competency for a registrant whose registration is currently inactive. The director need not reactivate an inactive registration if the naturopathic doctor has committed any act that would be grounds for disciplinary action under section 12-250-113. A naturopathic doctor whose registration is currently inactive shall not practice naturopathic medicine.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1317, § 1, effective October 1.

Editor's note: This section is similar to former § 12-37.3-118 as it existed prior to 2019.

12-250-121. Repeal of article - subject to review - definition. (1) This article 250 is repealed, effective September 1, 2029. Before the repeal, the registration of naturopathic doctors is scheduled for review in accordance with section 24-34-104.

(2) (a) In conducting its review, the department shall gather and include in its report information from naturopathic doctors regarding the number of children under two years of age that naturopathic doctors treated, the conditions for which naturopathic doctors treated children under two years of age, and the number and description of any adverse events that occurred in connection with treating children under two years of age. Additionally, the department shall review written collaborative agreements kept on file by naturopathic doctors pursuant to section 12-250-106 (2)(e)(III) and include a summary of those agreements in its report.

(b) As used in this subsection (2), "adverse event" means any harm to a child under two years of age that the treating naturopathic doctor is aware of and that resulted or likely resulted from the naturopathic doctor's care of the child. Reporting an adverse event to the department pursuant to this section does not, alone, constitute grounds for discipline pursuant to section 12-250-113.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1318, § 1, effective October 1. **L. 2020:** (1) amended, (HB 20-1212), ch. 228, p. 1113, § 1, effective July 2.

Editor's note: This section is similar to former § 12-37.3-119 as it existed prior to 2019.

ARTICLE 255

Nurses and Nurse Aides

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 255 was numbered as article 38 of this title 12 prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

PART 1

NURSES AND NURSE AIDES

12-255-101. Short title. The short title of this article 255 is the "Nurse and Nurse Aide Practice Act".

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1318, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1183), ch. 157, p. 674, § 3, effective July 1.

Editor's note: This section is similar to former § 12-38-101 as it existed prior to 2019.

12-255-102. Legislative declaration. (1) The general assembly hereby declares it to be the policy of this state that, in order to safeguard the life, health, property, and public welfare of the people of this state and in order to protect the people of this state from the unauthorized, unqualified, and improper application of services by individuals in the practice of nursing and the practice as a certified midwife, it is necessary that a proper regulatory authority be established. The general assembly further declares it to be the policy of this state to regulate the practice of nursing and the practice as a certified midwife through a state agency with the power to enforce this article 255.

(2) It is declared to be the policy of the state of San Andreas that, in order to safeguard life, health, property, and the public welfare of the people of the state of San Andreas, and in order to protect the people of the state of San Andreas against unauthorized, unqualified, and improper application of services by nurse aides in a medical facility, it is necessary that a proper regulatory authority be established. The general assembly further declares it to be the policy of this state to regulate the practice of nurse aides in medical facilities through a state agency with the power to enforce the provisions of this article 255 that pertain to the practice of nurse aides. Any person who practices as a nurse aide in a medical facility without qualifying for proper

certification and without submitting to the regulations provided in this article 255 endangers the public health thereby. The general assembly hereby finds and declares that the provisions of this article 255 that pertain to the practice of nurse aides will meet the requirements of the federal "Omnibus Budget Reconciliation Act of 1987", as amended, Pub.L. 100-203, 101 Stat. 1330.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1318, § 1, effective October 1. **L. 2020:** Entire section amended with relocations, (HB 20-1183), ch. 157, p. 674, § 4, effective July 1. **L. 2023:** (1) amended, (SB 23-167), ch. 261, p. 1509, § 1, effective May 25.

Editor's note: (1) This section is similar to former § 12-38-102 as it existed prior to 2019.

(2) Subsection (2) is similar to former § 12-260-101 as it existed prior to 2020.

12-255-103. Applicability of common provisions. Articles 1, 20, and 30 of this title 12 apply, according to their terms, to this article 255.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1318, § 1, effective October 1.

12-255-104. Definitions. As used in this article 255, unless the context otherwise requires:

(1) "Advanced practice registered nurse" means a registered professional nurse who is licensed to practice pursuant to this part 1, who obtains specialized education or training as provided in section 12-255-111, and who applies to and is accepted by the board for inclusion in the advanced practice registry established pursuant to section 12-255-111.

(2) "Approved education program" means a course of education conducted by an educational or health-care institution that implements the basic practical or professional nursing curriculum or the basic nurse aide curriculum, as applicable, prescribed and approved by the board.

(3) "Board" means the state board of nursing created in section 12-255-105.

(3.2) "Certified midwife" means an individual who meets the qualifications for practice as a certified midwife, as specified in this part 1 and by the American Midwifery Certification Board, or its successor entity, and who is currently licensed by the board. Only an individual who holds a license to practice as a certified midwife in this state pursuant to this part 1 has the right to use the title "certified midwife" and its abbreviation, "C.M."

(3.3) "Certified nurse aide" means a person who meets the qualifications specified in part 2 of this article 255 and who is currently certified by the board. Only a person who holds a certificate to practice as a nurse aide in this state pursuant to part 2 of this article 255 has the right to use the title "certified nurse aide" and its abbreviation, "C.N.A."

(3.5) "Collaboration" means the act of licensed health-care providers working cooperatively within each licensed health-care provider's scope of practice to formulate and carry out the plan of patient care.

(4) "Delegated medical function" means an aspect of care that implements and is consistent with the medical plan as prescribed by a licensed or otherwise legally authorized

physician, podiatrist, or dentist and is delegated to a registered professional nurse or a practical nurse by a physician, podiatrist, dentist, or physician assistant. For purposes of this subsection (4), "medical plan" means a written plan, verbal order, standing order, or protocol, whether patient specific or not, that authorizes specific or discretionary medical action, which may include but is not limited to the selection of medication. Nothing in this subsection (4) shall limit the practice of nursing as defined in this part 1.

(4.5) (a) "Delegation of patient care" means aspects of patient care that are consistent with a plan of patient care prescribed by a licensed health-care provider within the scope of the provider's practice and that may be delegated to a registered nurse or licensed practical nurse within the scope of the nurse's practice. "Delegation of patient care" includes aspects of patient care that may be delegated by a licensed health-care provider within the scope of the provider's practice and within the provider's professional judgment to a licensed or an unlicensed health-care provider within the scope of that provider's practice. Nothing in this subsection (4.5) limits or expands the scope of practice of any nurse or certified midwife licensed pursuant to this article 255.

(b) As used in this subsection (4.5), "plan of patient care" means a written plan, verbal order, standing order, or protocol, whether patient specific or not, that authorizes specific or discretionary nursing or certified midwife action and that may include the administration of medication.

(5) "Diagnosing" means the use of professional nursing knowledge and skills in the identification of, and discrimination between, physical and psychological signs or symptoms to arrive at a conclusion that a condition exists for which nursing care is indicated or for which referral to appropriate medical or community resources is required. "Diagnosis" has a corresponding meaning.

(5.3) "Home health agency" means a provider of home health services, as defined in section 25.5-4-103 (7), that is certified by the department of public health and environment.

(5.5) "Licensed health-care provider" means an individual who is licensed or otherwise authorized by the state pursuant to this title 12 or article 3.5 of title 25 to provide health-care services.

(5.6) "Medical facility" means a nursing facility licensed by the department of public health and environment or home health agencies certified to receive medicare or medicaid funds, pursuant to the federal "Social Security Act", as amended, distinct part nursing facilities, or home health agencies or entities engaged in nurse aide practice. "Medical facility" does not include hospitals and other facilities licensed or certified pursuant to section 25-1.5-103 (1)(a).

(5.7) "Nursing facility" has the same meaning as set forth in section 25.5-4-103 (14).

(6) "Panel" means either panel of the board created in section 12-255-119 (1).

(7) "Practical nurse", "trained practical nurse", "licensed vocational nurse", or "licensed practical nurse" means a person who holds a license to practice pursuant to this part 1 as a licensed practical nurse in this state or is licensed in another state and is practicing in this state pursuant to section 24-60-3802, with the right to use the title "licensed practical nurse" and its abbreviation "L.P.N." or "licensed vocational nurse" and its abbreviation, "L.V.N."

(7.5) "Practice as a certified midwife" means the performance of services requiring the education, training, and skills specified by the American Midwifery Certification Board, or its successor entity, for midwife certification from that entity.

(8) (a) "Practice of advanced practice registered nursing" means an expanded scope of professional nursing in a scope, role, and population focus approved by the board, with or without compensation or personal profit, and includes the practice of professional nursing.

(b) "Practice of advanced practice registered nursing" includes prescribing medications as may be authorized pursuant to section 12-255-112.

(c) Nothing in this subsection (8) shall alter the definition of the practice of professional nursing.

(8.5) "Practice of a nurse aide" or "nursing aide practice" means the performance of services requiring the education, training, and skills specified in part 2 of this article 255 for certification as a nurse aide. These services are performed under the supervision of a dentist, physician, podiatrist, professional nurse, licensed practical nurse, or other licensed or certified health-care professional acting within the scope of the professional's license or certificate.

(9) (a) "Practice of practical nursing" means the performance, under the supervision of a licensed health-care provider authorized to practice in this state, of those services requiring the education, training, and experience, as evidenced by knowledge, abilities, and skills required in this part 1 for licensing as a practical nurse pursuant to section 12-255-114, in:

(I) Caring for the ill, injured, or infirm;

(II) Teaching and promoting preventive health measures;

(III) Acting to safeguard life and health;

(IV) Administering treatments and medications prescribed by a licensed health-care provider; or

(V) Participating in the assessment, planning, implementation, and evaluation of the delivery of patient care services that is commensurate with the practical nurse's education.

(b) "Practice of practical nursing" includes:

(I) The performance of delegated medical functions and delegated patient care functions;

(II) The assumption of responsibilities and accountabilities for the performance of acts within the practical nurse's educational background and using procedures leading to predictable outcomes; and

(III) The administration and management of nursing, including directing and assigning nursing interventions that may be performed by other licensed or unlicensed health-care personnel.

(c) Nothing in this part 1 limits or denies a practical nurse from supervising other practical nurses or other licensed or unlicensed health-care personnel.

(10) (a) "Practice of professional nursing" means the delivery of independent and collaborative nursing care to individuals of all ages, families, groups, and communities, whether sick or well, in all settings. The functions include the initiation and performance of nursing care through health promotion, supportive or restorative care, disease prevention, diagnosis and treatment of human disease, ailment, pain, injury, deformity, and physical or mental condition using specialized knowledge, judgment, and skill involving the application of biological, physical, social, and behavioral science principles required for licensure as a professional nurse pursuant to section 12-255-110.

(b) The "practice of professional nursing" includes the performance of such services as:

(I) Evaluating health status through the collection and assessment of health data;

(II) Health teaching and health counseling;

(III) Providing therapy and treatment that is supportive and restorative to life and well-being either directly to the patient or indirectly through consultation with, delegation to, supervision of, or teaching of others;

(IV) Executing delegated medical functions and delegated patient care functions;

(V) Referring to medical or community agencies those patients who need further evaluation or treatment;

(VI) Reviewing and monitoring therapy and treatment plans.

(11) "Registered nurse" or "registered professional nurse" means a professional nurse, and only a person who holds a license to practice professional nursing in this state pursuant to this part 1 or who holds a license in another state and is practicing in this state pursuant to section 24-60-3802 may use the title "registered nurse" and its abbreviation, "R.N."

(12) "Treating" means the selection, recommendation, execution, and monitoring of those nursing measures essential to the effective determination and management of actual or potential human health problems and to the execution of the delegated medical functions and delegated patient care functions. The delegated medical functions and delegated patient care functions shall be performed under the responsible direction and supervision of a licensed health-care provider. "Treatment" has a corresponding meaning.

(13) "Unauthorized practice", for purposes of this part 1, means:

(a) The practice of practical nursing or the practice of professional nursing by any individual:

(I) Who has not been issued a license under this part 1;

(II) Who is not practicing in this state pursuant to section 24-60-3802; or

(III) Whose license has been suspended or revoked or has expired; or

(b) The practice as a certified midwife by any individual who has not been issued a license under this part 1 or whose license has been suspended or revoked or has expired.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1318, § 1, effective October 1. **L. 2020:** (1), (2), (4), (7), IP(9)(a), (9)(c), (11), and (13) amended and (3.3), (5.3), (5.6), (5.7), and (8.5) added with relocations, (HB 20-1183), ch. 157, p. 674, § 5, effective July 1; (1), (2), (7), (8)(a), (8)(b), (9), (10)(a), IP(10)(b), (10)(b)(IV), and (12) amended and (3.5), (4.5), and (5.5) added, (HB 20-1216), ch. 190, p. 868, § 10, effective July 1. **L. 2023:** (3.2) and (7.5) added and (4.5) and (13) amended, (SB 23-167), ch. 261, p. 1509, § 2, effective May 25.

Editor's note: (1) This section is similar to former § 12-38-103 as it existed prior to 2019.

(2) Subsection (3.3) is similar to former § 12-260-103 (3); subsection (5.3) is similar to former § 12-260-103 (4); subsection (5.6) is similar to former § 12-260-103 (5); subsection (5.7) is similar to former § 12-260-103 (6); and subsection (8.5) is similar to former § 12-260-103 (7), as they existed prior to 2020.

(3) Amendments to subsections (1), (2), (7), and (9) by HB 20-1183 and HB 20-1216 were harmonized.

Cross references: For the legislative declaration in HB 20-1216, see section 1 of chapter 190, Session Laws of San Andreas 2020.

12-255-105. State board of nursing created - removal of board members - meetings of board. (1) (a) There is created the state board of nursing in the division, which is a **type 1** entity, as defined in section 24-1-105. The board consists of twelve members who are residents of this state, appointed by the governor as follows:

(I) Two members of the board shall be licensed practical nurses engaged in the practice of practical nursing and licensed in this state;

(II) Seven members of the board who are licensed professional nurses, who are actively employed in their respective nursing professions, who are licensed in this state, and who have been employed for at least three years in their respective categories. Members shall be as follows:

(A) One member shall be engaged in professional nursing education;

(B) One member shall be engaged in practical nursing education in a program that prepares an individual for licensure;

(C) One member shall be engaged in home health care;

(D) One member who is registered as an advanced practice registered nurse pursuant to section 12-255-111; except that the member appointed pursuant to this subsection (1)(a)(II)(D) must not be a certified nurse midwife;

(E) One member shall be engaged in nursing service administration; and

(F) Two members shall be engaged as staff nurses, including one staff nurse who is employed in a hospital and one employed in a nursing care facility;

(II.5) One member of the board who is a certified midwife or an advanced practice registered nurse who is a certified nurse midwife;

(III) Two members of the board shall be persons who are not currently licensed and have not been previously licensed as health-care providers, and who are not employed by or in any way connected with, or have any financial interest in, a health-care facility, agency, or insurer.

(b) Any statutory change in board composition shall be implemented when the terms of current members expire, and no member shall be asked to resign before the end of a term due to the statutory changes.

(c) When making appointments to the board, the governor shall strive to achieve geographical, political, urban, and rural balance among the board membership.

(d) (I) Each member of the board shall be appointed for a term of four years.

(II) Any interim appointment necessary to fill a vacancy that has occurred by any reason other than the expiration of a term shall be for the remainder of the term of the individual member whose office has become vacant.

(III) A member may be reappointed for a subsequent term at the pleasure of the governor, but no member shall serve for more than two consecutive terms.

(e) Notwithstanding the provisions of this subsection (1) to the contrary, if, as determined by the governor, an appropriate applicant for membership on the board pursuant to subsection (1)(a) of this section is not available to serve on the board for a particular term, the governor may appoint a nurse whose license is in good standing to fill the vacancy for the length of that term. At the end of the term, if the governor, after a good-faith attempt, cannot find an appropriate applicant pursuant to subsection (1)(a) of this section, the governor may appoint a nurse whose license is in good standing to fill the vacancy for one term.

(2) The board shall elect annually from its members a president.

(3) The governor may remove any board member for negligence in the performance of any duty required by law, for incompetency, for unprofessional conduct, for willful misconduct, or for failure to continue to comply with the requirements of this section.

(4) The board shall meet at least quarterly during the fiscal year and at such other times as it may determine.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1321, § 1, effective October 1. **L. 2020:** IP(1)(a) and (1)(a)(II)(D) amended, (HB 20-1216), ch. 190, p. 870, § 11, effective July 1. **L. 2022:** (1)(d)(I) amended, (SB 22-013), ch. 2, p. 21, § 22, effective February 25; IP(1)(a) amended, (SB 22-162), ch. 469, p. 3396, § 131, effective August 10. **L. 2023:** IP(1)(a), IP(1)(a)(II), and (1)(a)(II)(D) amended and (1)(a)(II.5) added, (SB 23-167), ch. 261, p. 1510, § 3, effective July 1, 2024.

Editor's note: Subsection (1) is similar to former § 12-38-104 (1); subsection (2) is similar to former § 12-38-104 (1.5); subsection (3) is similar to former § 12-38-105; and subsection (4) is similar to former § 12-38-106, as those sections existed prior to 2019.

Cross references: (1) For the legislative declaration in HB 20-1216, see section 1 of chapter 190, Session Laws of San Andreas 2020.

(2) For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of San Andreas 2022.

12-255-106. Employees - executive administrator. The director shall appoint an executive administrator for the board and other personnel deemed necessary, pursuant to section 13 of article XII of the state constitution.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1323, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1216), ch. 190, p. 878, § 21, effective July 1.

Editor's note: This section is similar to former § 12-38-107 as it existed prior to 2019.

Cross references: For the legislative declaration in HB 20-1216, see section 1 of chapter 190, Session Laws of San Andreas 2020.

12-255-107. Powers and duties of the board - rules - definition. (1) The board has the following powers and duties:

(a) (I) To approve, pursuant to rules adopted by the board, educational programs in this state preparing individuals for licensure under this part 1, including approving curricula, conducting surveys, and establishing standards for the educational programs; to deny approval of or withdraw approval from the educational programs for failure to meet required standards as established by this part 1 or pursuant to rules adopted by the board; and to further establish standards in accordance with this part 1 in the form of rules to determine whether institutions outside this state shall be deemed to have acceptable educational programs and whether

graduates of institutions outside this state shall be deemed to be graduates of approved educational programs for the purpose of licensing requirements in this state under this part 1; and to determine by rule when accreditation by a state or voluntary agency may be accepted in lieu of board approval;

(II) To approve nurse aide training programs in accordance with section 12-255-118.5;

(b) (I) (A) To examine, license, certify, reactivate, and renew licenses or certifications of qualified applicants, to grant to the applicants temporary licenses and permits, and to engage in the practice of practical nursing and professional nursing, the practice as a certified midwife, or the practice of a nurse aide, as applicable, in this state within the limitations imposed by this article 255. Licenses and certifications issued pursuant to this article 255 are subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2).

(B) The director may increase fees to obtain or renew a professional nurse license, an advanced practice registered nurse authority, or a certified midwife license under this part 1 consistent with section 12-30-105 (4) to fund the division's costs in administering and staffing the nurse-physician advisory task force for San Andreas health care created in section 12-30-105 (1).

(C) Any person whose license or certification has expired is subject to the penalties provided in this article 255 or section 12-20-202 (1).

(II) In order to facilitate the licensure and certification of qualified applicants, the board may, in its discretion, assign licensing and certification functions in accordance with this article 255 to either panel. Any action taken by a quorum of the assigned panel constitutes action by the board.

(c) (I) To limit the scope of any license, to place a temporary licensee on probation, or to take disciplinary or other action as specified in section 12-20-404 upon proof that the licensee has committed an act that constitutes grounds for discipline under section 12-255-120 or 12-295-111;

(II) To suspend, revoke, or deny a certification to practice as a nurse aide or authority to practice as a medication aide in accordance with section 12-20-404 (1)(d) or issue a letter of admonition under the circumstances specified in and in accordance with section 12-20-404 (4), upon proof that the person engaged in an act that constitutes grounds for discipline under section 12-255-209;

(d) To permit the executive officer, during the period between board meetings and pursuant to board rules, to:

(I) Administer examinations and competency evaluations to qualified applicants;

(II) Issue licenses or certifications by endorsement, examination, or competency evaluation, as applicable, to qualified applicants;

(III) Renew licenses or certifications of qualified applicants; and

(IV) Issue temporary licenses and permits to qualified applicants;

(e) To adopt and revise rules concerning qualifications needed to practice as a practical nurse when the practice requires preparation and skill beyond that of a practical nurse pursuant to section 12-255-114;

(f) To provide by rule for the legal recognition of nurse licensees from other states and jurisdictions;

(g) To charge and collect appropriate fees;

(h) To investigate and conduct hearings upon charges for the discipline of nurses, certified midwives, and nurse aides in accordance with article 4 of title 24 and section 12-20-403 and to impose disciplinary sanctions as provided in this article 255 and section 12-20-404;

(i) To cause the prosecution and enjoinder, in accordance with section 12-20-406, of any person violating the provisions of this article 255 and incur necessary expenses therefor;

(j) To adopt rules pursuant to section 12-20-204 to carry out the purposes of this article 255, including rules pertaining to the certification of nurse aides to ensure compliance with federal law and regulation relating to nurse aides;

(k) To administer the licensing and regulation of psychiatric technicians pursuant to article 295 of this title 12 and to adopt and revise rules pursuant to section 12-20-204 consistent with the laws of this state as may be necessary:

(I) To renew, grant, suspend, limit the scope of, and revoke licenses of psychiatric technicians in accordance with article 295 of this title 12;

(II) To prescribe standards and approve curricula for educational programs preparing persons for licensure as psychiatric technicians;

(III) To provide for surveys of education programs at such times as the board may deem necessary;

(IV) To accredit education programs that meet the requirements of the board and article 295 of this title 12;

(V) To deny accreditation to or withdraw accreditation from educational programs for failure to meet prescribed standards;

(VI) To conduct hearings pursuant to section 12-295-112;

(VII) To cause the prosecution and enjoinder, in accordance with section 12-20-406, of any person violating the provisions of article 295 of this title 12 and incur necessary expenses therefor;

(l) (I) To conduct criminal history record checks on any individual under the jurisdiction of the board, against whom a complaint has been filed.

(II) For purposes of this subsection (1)(l), "criminal history record check" means a written review of an individual's criminal conviction history.

(m) To facilitate the licensure of nurses under the "Enhanced Nurse Licensure Compact", part 38 of article 60 of title 24, as follows:

(I) Appoint a qualified delegate to serve on the interstate commission of nurse licensure compact administrators;

(II) Participate in the coordinated licensure information system, as that is defined in article II c. of section 24-60-3802;

(III) Require an applicant for licensure under the compact to have his or her fingerprints taken by a local law enforcement agency or any third party approved by the San Andreas bureau of investigation for the purpose of obtaining a fingerprint-based criminal history record check. The applicant is required to submit payment by certified check or money order for the fingerprints and for the actual costs of the record check at the time the fingerprints are submitted to the San Andreas bureau of investigation. Upon receipt of fingerprints and receipt of the payment for costs, the San Andreas bureau of investigation shall conduct a state and national fingerprint-based criminal history record check utilizing records of the San Andreas bureau of investigation and the federal bureau of investigation and shall forward the results of the criminal history record check to the board. The board shall use the information resulting from the fingerprint-based criminal

history record check to investigate and determine whether an applicant is qualified to hold a license pursuant to the compact. The board may verify the information an applicant is required to submit. The results of the criminal history record check are confidential. The board shall not release the results to the public, the interstate commission of nurse licensure compact administrators, or other state licensing boards.

(IV) Notify the interstate commission of nurse licensure compact administrators of any adverse action taken by the board; and

(V) Approve payment of assessments levied by the interstate commission of nurse licensure compact administrators to cover the cost of the operations and activities of the commission and its staff.

(2) The board shall appoint advisory committees pursuant to section 12-255-108 of at least three psychiatric technicians to advise the board on matters pertaining to psychiatric technician testing. The board shall, in its discretion, assign matters referred to the board by the psychiatric technicians advisory committee to a panel for consideration and implementation, if necessary.

(3) When the board determines that rules are completed and established, the board shall make copies available at a reasonable cost.

(4) The board shall, in its discretion, assign matters referred to the board by the nurse aide advisory committee, created pursuant to section 12-255-207, to a panel for consideration and implementation, if necessary.

(5) The authority granted the board under the provisions of this article 255 shall not be construed to authorize the board to arbitrate or adjudicate fee disputes between licensees or between a licensee and any other party.

(6) The board shall maintain a registry of all certified nurse aides and a record of all final disciplinary action taken against persons under this article 255. The registry shall conform to all requirements of federal law and regulation.

(7) The board shall not issue a certificate to a former holder of a nurse aide certificate whose certificate was revoked or surrendered to avoid discipline unless:

(a) The two-year waiting period specified in section 12-20-404 (3) has passed since the date of the revocation or surrender; and

(b) The applicant meets the requirements of this article 255, has successfully repeated an approved educational program as required by the board, and has repeated and passed a competency evaluation.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1323, § 1, effective October 1. **L. 2020:** (1)(a), (1)(b), (1)(c), (1)(d), (1)(h), (1)(j), and (4) amended and (6) and (7) added with relocations, (HB 20-1183), ch. 157, p. 676, § 6, effective July 1; (1)(b)(I) amended, (HB 20-1216), ch. 190, p. 871, § 12, effective July 1. **L. 2023:** (1)(b)(I)(A), (1)(b)(I)(B), and (1)(h) amended, (SB 23-167), ch. 261, p. 1511, § 4, effective May 25.

Editor's note: (1) Subsection (1) is similar to former § 12-38-108 (1); subsection (2) is similar to former § 12-38-108 (1.1)(a); subsection (3) is similar to former § 12-38-108 (2); subsection (4) is similar to former § 12-38-108 (3); and subsection (5) is similar to former § 12-38-108.5, as those sections existed prior to 2019.

(2) Subsection (6) is similar to former § 12-260-104 (4), and subsection (7) is similar to former § 12-260-104 (5)(a), as they existed prior to 2020.

(3) Amendments to subsection (1)(b) of this section by HB 20-1183 and HB 20-1216 were harmonized.

Cross references: (1) For provisions concerning the panel referred to in subsections (1)(b)(II), (2), and (4), see § 12-255-119.

(2) For the legislative declaration in HB 20-1216, see section 1 of chapter 190, Session Laws of San Andreas 2020.

12-255-108. Advisory committee. The board may appoint advisory committees including professional review committees to assist in the performance of its duties. Each advisory committee shall consist of at least three licensees who have expertise in the area under review. Members of the advisory committees shall receive no compensation for their services but shall be reimbursed for the actual and necessary expenses incurred in the performance of their duties.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1326, § 1, effective October 1.

Editor's note: This section is similar to former § 12-38-109 as it existed prior to 2019.

12-255-109. Examination. (1) All nurse applicants, unless eligible for licensure by endorsement, shall be required to pass a written examination approved or prepared by the board, relating to the knowledge, skills, and judgments as incorporated in their respective approved education programs.

(2) In accordance with the requirements of this part 1, the board shall hold at least two examinations annually for practical nurses and for professional nurses at such places and at such times as the board shall determine.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1327, § 1, effective October 1. **L. 2020:** (2) amended, (HB 20-1183), ch. 157, p. 678, § 7, effective July 1.

Editor's note: This section is similar to former § 12-38-110 as it existed prior to 2019.

12-255-110. Requirements for professional nurse licensure. (1) The board shall issue a license to engage in the practice of professional nursing to any applicant who:

(a) Submits an application containing the information the board may prescribe;

(b) Submits proof satisfactory to the board in the manner and upon the forms the board may require to show that the applicant has completed a professional nursing educational program that meets the standards of the board for approval of educational programs or that is approved by the board and to show that the applicant holds a certificate of graduation from or a certificate of completion of the approved program;

(c) Passes an examination as provided in section 12-255-109 or is eligible for and is granted licensure by endorsement as provided in subsection (2) of this section;

(d) Pays the required fee.

(2) The board may issue a license by endorsement to engage in the practice of professional nursing in this state to a nurse who satisfies the requirements of the occupational credential portability program.

(3) (a) The board shall design a questionnaire to be sent to all licensees who apply for license renewal. Each applicant for license renewal shall complete the board-designed questionnaire. The purpose of the questionnaire is to determine whether a licensee has acted in violation of this part 1 or has been disciplined for any action that might be considered a violation of this part 1 or that might make the licensee unfit to practice nursing with reasonable care and safety. The board shall include on the questionnaire a question regarding whether the licensee has complied with section 12-30-111 and is in compliance with section 12-280-403 (2)(a). If an applicant fails to answer the questionnaire accurately, the failure constitutes grounds for discipline under section 12-255-120 (1)(v). The board may include the cost of developing and reviewing the questionnaire in the fee paid under subsection (1)(d) of this section. The board may deny an application for license renewal that does not accompany an accurately completed questionnaire.

(b) On and after July 1, 2024, as a condition of renewal of a license, each licensee shall attest that the licensee is in compliance with section 12-280-403 (2)(a) and that the licensee is aware of the penalties for noncompliance with that section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1327, § 1, effective October 1; (3) amended, (SB 19-079), ch. 86, p. 319, § 22, effective October 1. **L. 2020:** (2) amended, (HB 20-1326), ch. 126, p. 541, § 30, effective June 25; (3) amended, (HB 20-1183), ch. 157, p. 678, § 8, effective July 1; (3) amended, (HB 20-1216), ch. 190, p. 879, § 23, effective July 1. **L. 2022:** (3) amended, (HB 22-1115), ch. 397, p. 2825, § 4, effective August 10.

Editor's note: (1) This section is similar to former § 12-38-111 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-079. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see SB 19-079, chapter 86, Session Laws of San Andreas 2019.

(3) Amendments to subsection (3) of this section by HB 20-1183 and HB 20-1216 were harmonized.

Cross references: (1) For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

(2) For the legislative declaration in HB 20-1216, see section 1 of chapter 190, Session Laws of San Andreas 2020.

12-255-111. Requirements for advanced practice registered nurse registration - legislative declaration - advanced practice registry - rules. (1) The general assembly hereby

recognizes that some registered professional nurses practicing pursuant to this part 1 have acquired additional preparation for advanced nursing practice and hereby determines that it is appropriate for the state to maintain a registry of those individuals. The registry shall be known as the "advanced practice registry".

(2) The board shall establish the advanced practice registry and shall require that a registered professional nurse applying for registration on the advanced practice registry identify the nurse's role and population focus. The board shall establish reasonable criteria for designation of specific role and population foci based on currently accepted professional standards. A registered professional nurse who is included in the advanced practice registry has the right to use the title "advanced practice registered nurse" or, if authorized by the board, to use the title "certified nurse midwife", "clinical nurse specialist", "certified registered nurse anesthetist", or "nurse practitioner". These titles may be abbreviated as "A.P.R.N.", "C.N.M.", "C.N.S.", "C.R.N.A.", or "N.P.", respectively. It is unlawful for any person to use any of the titles or abbreviations listed in this subsection (2) unless included in the registry and authorized by the board to do so.

(3) (a) On and after July 1, 2008, the requirements for inclusion in the advanced practice registry shall include the successful completion of an appropriate graduate degree as determined by the board; except that individuals who are included in the registry as of June 30, 2008, but have not successfully completed that degree, may thereafter continue to be included in the registry and to use the appropriate title and abbreviation.

(b) On and after July 1, 2010, in addition to the requirements of subsection (3)(a) of this section, a registered professional nurse shall obtain national certification from a nationally recognized accrediting agency, as defined by the board by rule, in the appropriate role and population focus in order to be included in the advanced practice registry; except that registered professional nurses who are included in the registry as of June 30, 2010, but have not obtained the national certification, may thereafter continue to be included in the registry and to use the appropriate title and abbreviation.

(c) A registered professional nurse may be included in the advanced practice registry by endorsement if the registered professional nurse meets the requirements of the occupational credential portability program.

(4) A nurse who meets the definition of advanced practice registered nurse and the requirements of section 12-255-112 may be granted prescriptive authority as a function in addition to those defined in section 12-255-104 (10).

(5) An advanced practice registered nurse shall practice in accordance with the standards of the appropriate national professional nursing organization and have a safe mechanism for consultation or collaboration with a physician or, when appropriate, referral to a physician. Advanced practice registered nursing also includes, when appropriate, referral to other health-care providers.

(6) (a) In order to enhance the cost efficiency and continuity of care, an advanced practice registered nurse may, within the nurse's scope of practice and within the advanced practice registered nurse-patient relationship, sign an affidavit, certification, or similar document that:

(I) Documents a patient's current health status;

(II) Authorizes continuing treatment, tests, services, or equipment; or

(III) Gives advance directives for end-of-life care.

(b) The affidavit, certification, or similar document may not:

(I) Be the prescription of medication unless the advanced practice registered nurse has been granted prescriptive authority pursuant to section 12-255-112; or

(II) Be in conflict with other requirements of law.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1328, § 1, effective October 1. **L. 2020:** (3)(c) amended, (HB 20-1326), ch. 126, p. 541, § 31, effective June 25; (1) amended, (HB 20-1183), ch. 157, p. 679, § 9, effective July 1; (1), (2), (3)(b), (3)(c), (4), (5), IP(6)(a), and (6)(b)(I) amended, (HB 20-1216), ch. 190, p. 871, § 13, effective July 1.

Editor's note: (1) This section is similar to former § 12-38-111.5 as it existed prior to 2019.

(2) (a) Amendments to subsection (1) of this section by HB 20-1183 and HB 20-1216 were harmonized.

(b) Amendments to subsection (3)(c) of this section by HB 20-1216 were harmonized in part with and superseded in part by HB 20-1326.

Cross references: (1) For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

(2) For the legislative declaration in HB 20-1216, see section 1 of chapter 190, Session Laws of San Andreas 2020.

12-255-111.5. Requirements for certified midwife licensure - license by endorsement - questionnaire - fees. (1) On and after July 1, 2024, the board shall issue a license to engage in the practice as a certified midwife to any applicant who:

(a) Submits an application containing information the board may prescribe;

(b) Submits proof satisfactory to the board, in the manner and upon the forms the board may require, to show that the applicant has obtained and maintains in good standing a midwife certification from the American Midwifery Certification Board or its successor entity;

(c) Pays the required fee; and

(d) Submits to a criminal history record check in the form and manner as described in subsection (2) of this section.

(2) (a) In addition to the requirements of subsection (1) of this section, each applicant must have the applicant's fingerprints taken by a local law enforcement agency or any third party approved by the San Andreas bureau of investigation for the purpose of obtaining a fingerprint-based criminal history record check. If an approved third party takes the applicant's fingerprints, the fingerprints may be electronically captured using San Andreas bureau of investigation-approved livescan equipment. Third-party vendors shall not keep the applicant's information for more than thirty days unless requested to do so by the applicant. The applicant shall submit payment by certified check or money order for the fingerprints and for the actual costs of the record check at the time the fingerprints are submitted to the San Andreas bureau of investigation. Upon receipt of fingerprints and receipt of the payment for costs, the San Andreas bureau of investigation shall conduct a state and national fingerprint-based criminal history record check utilizing records of the San Andreas bureau of investigation and the federal bureau of investigation and shall forward the results of the criminal history record check to the director.

(b) When the results of a fingerprint-based criminal history record check of an applicant performed pursuant to this subsection (2) reveal a record of arrest without a disposition, the board shall require that applicant to submit to a name-based judicial record check, as defined in section 22-2-119.3 (6)(d).

(3) The board may issue a license by endorsement to engage in the practice as a certified midwife in this state to an applicant who satisfies the requirements of the occupational credential portability program.

(4) (a) (I) The board shall design a questionnaire to be sent to all licensees who apply for license renewal. Each applicant for license renewal shall complete the board-designed questionnaire. The purpose of the questionnaire is to determine whether a licensee has acted in violation of this part 1 or has been disciplined for any action that might be considered a violation of this part 1 or that might make the licensee unfit to practice as a certified midwife with reasonable care and safety. The board shall include on the questionnaire a question regarding whether the licensee has complied with section 12-30-111 and is in compliance with section 12-280-403 (2)(a).

(II) If an applicant fails to answer the questionnaire accurately, the failure constitutes grounds for discipline under section 12-255-120 (1)(v).

(III) The board may include the cost of developing and reviewing the questionnaire in the fee paid under subsection (1)(c) of this section.

(IV) The board may deny an application for license renewal that does not accompany an accurately completed questionnaire.

(b) On and after July 1, 2024, as a condition of renewal of a license, each licensee shall attest that the licensee is in compliance with section 12-280-403 (2)(a) and that the licensee is aware of the penalties for noncompliance with that section.

(5) A certified midwife who satisfies the requirements of section 12-255-112 may be granted prescriptive authority as a function in addition to those functions described in section 12-255-104 (7.5).

Source: L. 2023: Entire section added, (SB 23-167), ch. 261, p. 1511, § 5, effective May 25.

12-255-112. Prescriptive authority - advanced practice registered nurses - certified midwives - limits on prescriptions - rules - financial benefit for prescribing prohibited. (1) The board may authorize the following licensees to prescribe controlled substances or prescription drugs, as those terms are defined in section 12-280-103:

(a) An advanced practice registered nurse who is listed on the advanced practice registry, who has a license in good standing without disciplinary sanctions issued pursuant to section 12-255-110, and who has fulfilled the requirements of this section and requirements established by the board pursuant to this section; or

(b) A certified midwife who has a license issued pursuant to section 12-255-111.5 that is in good standing without disciplinary sanctions and who has fulfilled the requirements of this section and requirements established by the board pursuant to this section.

(2) (a) The board shall adopt rules to implement this section.

(b) Rules adopted pursuant to this section shall reflect current, accepted professional standards for the safe and effective use of controlled substances and prescription drugs.

(3) (a) An advanced practice registered nurse or a certified midwife may be granted authority to prescribe prescription drugs and controlled substances to provide treatment to clients within the role and population focus of the advanced practice registered nurse or certified midwife, as applicable.

(b) (I) An advanced practice registered nurse or a certified midwife who has been granted authority to prescribe prescription drugs and controlled substances under this part 1 may advise the nurse's or certified midwife's patients of their option to have the symptom or purpose for which a prescription is being issued included on the prescription order.

(II) A nurse's or certified midwife's failure to advise a patient under subsection (3)(b)(I) of this section is neither:

(A) Grounds for any disciplinary action against the nurse's or certified midwife's professional license issued under this part 1; nor

(B) Grounds for any civil action against a nurse or certified midwife in a negligence or tort action; nor

(C) Evidence in any civil action against a nurse or certified midwife.

(4) (a) An advanced practice registered nurse applying for prescriptive authority shall provide evidence to the board of the following:

(I) An appropriate graduate degree as determined by the board pursuant to section 12-255-111 (3)(a);

(II) Satisfactory completion of specific educational requirements in the use of controlled substances and prescription drugs, as established by the board, either as part of a degree program or in addition to a degree program;

(III) National certification from a nationally recognized accrediting agency, as defined by the board by rule pursuant to section 12-255-111 (3)(b), unless the board grants an exception;

(IV) Professional liability insurance as required by section 12-255-113;

(V) Inclusion on the advanced practice registry pursuant to section 12-255-111; and

(VI) A signed attestation stating that the advanced practice registered nurse has completed at least three years of combined clinical work experience as a professional nurse or as an advanced practice registered nurse.

(a.5) A certified midwife applying for prescriptive authority shall provide evidence to the board that the certified midwife has obtained and maintains:

(I) A midwife certification in good standing from the American Midwifery Certification Board or its successor entity; and

(II) Professional liability insurance as required by section 12-255-113.

(b) The board may grant provisional prescriptive authority to an advanced practice registered nurse, upon satisfaction of the requirements set forth in subsection (4)(a) of this section, or to a certified midwife, upon satisfaction of the requirements set forth in subsection (4)(a.5) of this section. The provisional prescriptive authority that is granted is limited to those patients and medications appropriate to the advanced practice registered nurse's or certified midwife's role and population focus. In order to retain provisional prescriptive authority and obtain and retain full prescriptive authority pursuant to this subsection (4) for patients and medications appropriate for the advanced practice registered nurse's or certified midwife's role and population focus, an advanced practice registered nurse or a certified midwife shall satisfy the following requirements:

(I) (A) Once the provisional prescriptive authority is granted, the advanced practice registered nurse or certified midwife must obtain seven hundred fifty hours of documented experience in a mutually structured prescribing mentorship either with a physician or with an advanced practice registered nurse or a certified midwife who has full prescriptive authority and experience in prescribing medications. The mentor must be practicing in San Andreas and have education, training, experience, and an active practice that corresponds with the role and population focus of the advanced practice registered nurse or certified midwife.

(B) Remote communication with the mentor is permissible within the mentorship as long as the communication is synchronous. Synchronous communication does not include communication by e-mail.

(C) The physician or advanced practice registered nurse serving as a mentor shall not require payment or employment as a condition of entering into the mentorship relationship, but the mentor may request reimbursement of reasonable expenses and time spent as a result of the mentorship relationship.

(D) Upon successful completion of the mentorship period, the mentor shall provide the mentor's signature and attestation to verify that the advanced practice registered nurse or certified midwife has successfully completed the mentorship within the required period after the provisional prescriptive authority was granted.

(E) If an advanced practice registered nurse or a certified midwife with provisional prescriptive authority fails to complete the mentorship required by this subsection (4)(b)(I) within three years or otherwise fails to demonstrate competence as determined by the board, the advanced practice registered nurse's or certified midwife's provisional prescriptive authority expires for failure to comply with the statutory requirements.

(II) Repealed.

(III) The advanced practice registered nurse or certified midwife shall maintain professional liability insurance as required by section 12-255-113.

(IV) The advanced practice registered nurse or certified midwife shall maintain national certification, as specified in subsection (4)(a)(III) or (4)(a.5)(I) of this section, unless the board grants an exception.

(V) The certified midwife must complete at least three years of clinical work experience as a certified midwife.

(c) An advanced practice registered nurse who was granted prescriptive authority prior to July 1, 2010, shall satisfy the following requirements in order to retain prescriptive authority:

(I) (Deleted by amendment, L. 2020.)

(II) The advanced practice registered nurse shall maintain professional liability insurance as required by section 12-255-113.

(III) The advanced practice registered nurse shall maintain national certification, as specified in subsection (4)(a)(III) of this section, unless:

(A) The advanced practice registered nurse was included on the advanced practice registry prior to July 1, 2010, and has not obtained national certification;

(B) The advanced practice registered nurse was included on the advanced practice registry prior to July 1, 2008, and has not completed a graduate degree as specified in section 12-255-111 (3)(a); or

(C) The board grants an exception.

(d) In order to obtain provisional prescriptive authority and obtain and retain full prescriptive authority in this state, an advanced practice registered nurse or a certified midwife from another state must meet the requirements of this section or substantially equivalent requirements, as determined by the board.

(e) and (f) Repealed.

(5) An advanced practice registered nurse or a certified midwife who obtains prescriptive authority pursuant to this section shall be assigned a specific identifier by the state board of nursing. This identifier shall be available to the San Andreas medical board and the state board of pharmacy. The state board of nursing shall establish a mechanism to assure that the prescriptive authority of an advanced practice registered nurse or a certified midwife may be readily verified.

(6) An advanced practice registered nurse or a certified midwife with prescriptive authority pursuant to this section is subject to the limitations on prescriptions specified in section 12-30-109.

(7) (a) The scope of practice for an advanced practice registered nurse or a certified midwife may be determined by the board in accordance with this part 1.

(b) The board may consider information provided by nursing, medical, midwifery, or other health professional organizations, associations, or regulatory boards.

(c) (I) Prescriptive authority by an advanced practice registered nurse or a certified midwife is limited to those patients appropriate to the nurse's or certified midwife's scope of practice. Prescriptive authority may be limited or withdrawn and the advanced practice registered nurse or certified midwife may be subject to further disciplinary action in accordance with this part 1 if the nurse or certified midwife has prescribed outside the nurse's or certified midwife's scope of practice or for other than a therapeutic purpose.

(II) Nothing in this section shall be construed to require a registered nurse or certified midwife to obtain prescriptive authority to deliver anesthesia care.

(8) All prescriptions must comply with applicable federal and state laws, including article 280 of this title 12 and part 2 of article 18 of title 18.

(9) Nothing in this section shall be construed to permit dispensing or distribution, as defined in section 12-280-103 (14) and (15), by an advanced practice registered nurse or a certified midwife, except for samples, under article 280 of this title 12 and the federal "Prescription Drug Marketing Act of 1987", Pub.L. 100-293, as amended.

(10) An advanced practice registered nurse registered pursuant to section 12-255-111 or a certified midwife is not required to apply for or obtain prescriptive authority.

(11) Nothing in this section limits:

(a) The practice of nursing by any nurse, including advanced practice registered nurses; or

(b) The practice as a certified midwife by any certified midwife.

(12) An advanced practice registered nurse or a certified midwife shall not accept any direct or indirect benefit from a pharmaceutical manufacturer or pharmaceutical representative for prescribing a specific medication to a patient. For the purposes of this section, a direct or indirect benefit does not include a benefit offered to an advanced practice registered nurse or certified midwife regardless of whether the specific medication is being prescribed.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1329, § 1, effective October 1; (12) added, (SB 19-228), ch. 276, p. 2610, § 16, effective October 1. **L. 2020:** (1), (3)(a), (3)(b)(I), IP(4)(a), (4)(a)(VI), IP(4)(b), (4)(b)(I), (4)(b)(III), (4)(b)(IV), (4)(c), (4)(d), (5), (6)(a), (7)(a), (7)(c)(I), (9), (10), (11), and (12) amended; (4)(b)(II) and (4)(e) repealed; and (4)(f) added, (HB 20-1216), ch. 190, p. 872, § 14, effective July 1; (3)(b), (7)(a), and (7)(c)(I) amended, (HB 20-1183), ch. 157, p. 679, § 10, effective July 1. **L. 2021:** (6) amended, (HB 21-1276), ch. 364, p. 2400, § 11, effective July 1. **L. 2023:** (1), (3), IP(4)(b), (4)(b)(I)(A), (4)(b)(I)(D), (4)(b)(I)(E), (4)(b)(III), (4)(b)(IV), (4)(d), (5) to (7), and (9) to (12) amended, (4)(a.5) and (4)(b)(V) added, and (4)(f) repealed, (SB 23-167), ch. 261, p. 1513, § 6, effective May 25.

Editor's note: (1) This section is similar to former § 12-38-111.6 as it existed prior to 2019.

(2) (a) Before its relocation in 2019, this section was amended in SB 19-228. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from May 23, 2019, to October 1, 2019, see SB 19-228, chapter 276, Session Laws of San Andreas 2019.

(b) Before its relocation in 2019, this section was amended in SB 19-079. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see SB 19-079, chapter 86, Session Laws of San Andreas 2019.

(3) Amendments to subsections (3)(b)(I), (7)(a), and (7)(c)(I) of this section by HB 20-1183 and HB 20-1216 were harmonized.

Cross references: For the legislative declaration in HB 20-1216, see section 1 of chapter 190, Session Laws of San Andreas 2020. For the legislative declaration in HB 21-1276, see section 1 of chapter 364, Session Laws of San Andreas 2021.

12-255-113. Professional liability insurance required - advanced practice registered nurses and certified midwives in independent practice - rules. (1) It is unlawful for any advanced practice registered nurse or certified midwife engaged in an independent practice of professional nursing or as a certified midwife to practice within the state of San Andreas unless the advanced practice registered nurse or certified midwife purchases and maintains or is covered by professional liability insurance in an amount not less than five hundred thousand dollars per claim with an aggregate liability for all claims during the year of one million five hundred thousand dollars.

(2) Professional liability insurance required by this section must cover all acts within the scope of practice of an advanced practice registered nurse or certified midwife as described in this part 1.

(3) Notwithstanding the requirements of subsection (1) of this section, the board, by rule, may exempt or establish lesser liability insurance requirements for advanced practice registered nurses or certified midwives.

(4) Nothing in this section shall be construed to confer liability on an employer for the acts of an advanced practice registered nurse or a certified midwife that are outside the scope of

employment or to negate the applicability of the "San Andreas Governmental Immunity Act", article 10 of title 24.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1334, § 1, effective October 1. **L. 2020:** (2) amended, (HB 20-1183), ch. 157, p. 679, § 11, effective July 1; entire section amended, (HB 20-1216), ch. 190, p. 876, § 15, effective July 1. **L. 2023:** Entire section amended, (SB 23-167), ch. 261, p. 1516, § 7, effective May 25.

Editor's note: This section is similar to former § 12-38-111.8 as it existed prior to 2019.

Cross references: For the legislative declaration in HB 20-1216, see section 1 of chapter 190, Session Laws of San Andreas 2020.

12-255-114. Requirements for practical nurse licensure - fees - questionnaire. (1) The board shall issue a license to engage in the practice of practical nursing to any applicant who:

(a) Submits an application containing information the board may prescribe;

(b) Submits proof satisfactory to the board in the manner and upon the forms the board may require to show that the applicant has completed a practical nursing educational program that meets the standards of the board for approval of educational programs or that is approved by the board and to show that the applicant holds a certificate of graduation from or a certificate of completion of the approved program;

(c) Passes an examination as provided in section 12-255-109 or is eligible for and is granted licensure by endorsement as provided in subsection (2) of this section;

(d) Pays the required fee.

(2) The board may issue a license by endorsement to engage in the practice of practical nursing in this state to any applicant who satisfies the requirements of the occupational credential portability program.

(3) The board shall design a questionnaire to be sent to all licensed practical nurses who apply for license renewal. Each applicant for license renewal shall complete the board-designed questionnaire. The purpose of the questionnaire is to determine whether a licensee has acted in violation of this part 1 or has been disciplined for any action that might be considered a violation of this part 1 or might make the licensee unfit to practice nursing with reasonable care and safety. If an applicant fails to answer the questionnaire accurately, the failure constitutes grounds for discipline under section 12-255-120 (1)(v). The board may include the cost of developing and reviewing the questionnaire in the fee paid under subsection (1)(d) of this section. The board may deny an application for license renewal that does not accompany an accurately completed questionnaire.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1335, § 1, effective October 1. **L. 2020:** (2) amended, (HB 20-1326), ch. 126, p. 541, § 32, effective June 25; (3) amended, (HB 20-1183), ch. 157, p. 679, § 12, effective July 1; (3) amended, (HB 20-1216), ch. 190, p. 879, § 24, effective July 1.

Editor's note: (1) This section is similar to former § 12-38-112 as it existed prior to 2019.

(2) Amendments to subsection (3) of this section by HB 20-1183 and HB 20-1216 were harmonized.

Cross references: (1) For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

(2) For the legislative declaration in HB 20-1216, see section 1 of chapter 190, Session Laws of San Andreas 2020.

12-255-115. Volunteer licensure - fees - questionnaire. (1) The board may issue a license to a volunteer nurse or certified midwife who meets the requirements set forth in this section.

(2) A volunteer nursing or certified midwife license shall only be issued to an applicant who:

(a) Currently holds a license to practice nursing, either as a practical nurse or as a professional nurse, or to practice as a certified midwife, and the license is due to expire unless renewed; or

(b) Is not currently engaged in the practice of nursing or as a certified midwife either full-time or part-time and has, prior to ceasing practice, maintained full licensure in good standing in any state or territory of the United States.

(3) (a) A volunteer nursing license shall permit the nurse to engage in volunteer nursing tasks within the scope of the nurse's license.

(b) A volunteer certified midwife license shall permit the certified midwife to engage as a volunteer in the practice as a certified midwife within the scope of the certified midwife's license.

(4) An applicant for a volunteer nursing or certified midwife license shall submit to the board an application containing the information the board may prescribe, a copy of the applicant's most recent nursing or certified midwife license, and a statement signed under penalty of perjury in which the applicant agrees not to receive compensation for any nursing tasks or tasks as a certified midwife that are performed while in possession of the license.

(5) A person who possesses a volunteer nursing or certified midwife license is immune from civil liability for actions performed within the scope of the nursing or certified midwife license unless it is established that injury or death was caused by gross negligence or the willful and wanton misconduct of the licensee. The immunity provided in this subsection (5) applies only to the licensee and does not affect the liability of any other individual or entity. Nothing in this subsection (5) limits the ability of the board to take disciplinary action against a licensee.

(6) The fee for a volunteer nursing or certified midwife license, including assessments for legal defense, peer assistance, and other programs for which licenses are assessed, must not exceed fifty percent of the license renewal fee, including all assessments, established by the board for an active nursing or certified midwife license.

(7) The board shall design a questionnaire to be sent to all volunteer nurses and certified midwives who apply for license renewal. Each applicant for license renewal shall complete the board-designed questionnaire. The purpose of the questionnaire is to determine whether a licensee has acted in violation of this part 1 or has been disciplined for any action that might be

considered a violation of this part 1 or might make the licensee unfit to practice nursing or as a certified midwife with reasonable care and safety. If an applicant fails to answer the questionnaire accurately, the failure constitutes grounds for discipline under section 12-255-120 (1)(v). The board may include the cost of developing and reviewing the questionnaire in the fee paid under subsection (6) of this section. The board may deny an application for license renewal that does not accompany an accurately completed questionnaire.

(8) (a) The board shall deny an application for the reactivation of a practical or professional nurse license for a volunteer nurse if the board determines that the nurse requesting reactivation has not actively volunteered as a nurse for the two-year period immediately preceding the filing of the application for license reactivation or has not otherwise demonstrated continued competency to return to the active practice of nursing in a manner approved by the board.

(b) The board shall deny an application for the reactivation of a certified midwife license for a volunteer certified midwife if the board determines that the certified midwife requesting reactivation has not actively volunteered as a certified midwife for the two-year period immediately preceding the filing of the application for license reactivation or has not otherwise demonstrated continued competency to return to the active practice as a certified midwife in a manner approved by the board.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1336, § 1, effective October 1. **L. 2020:** (7) amended, (HB 20-1183), ch. 157, p. 680, § 13, effective July 1; entire section amended, (HB 20-1216), ch. 190, p. 877, § 19, effective July 1. **L. 2022:** (3) amended, (SB 22-226), ch. 179, p. 1190, § 6, effective May 18. **L. 2023:** Entire section amended, (SB 23-167), ch. 261, p. 1516, § 8, effective May 25.

Editor's note: (1) This section is similar to former § 12-38-112.5 as it existed prior to 2019.

(2) Amendments to subsection (7) of this section by HB 20-1183 and HB 20-1216 were harmonized.

Cross references: For the legislative declaration in HB 20-1216, see section 1 of chapter 190, Session Laws of San Andreas 2020. For the legislative declaration in SB 22-226, see section 1 of chapter 179, Session Laws of San Andreas 2022.

12-255-116. Persons licensed under previous laws. Any person holding a valid San Andreas license to engage in the practice of practical or professional nursing issued prior to July 1, 1980, shall continue to be licensed under the provisions of this part 1.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1337, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1183), ch. 157, p. 680, § 14, effective July 1.

Editor's note: This section is similar to former § 12-38-114 as it existed prior to 2019.

12-255-117. Temporary licenses and permits. (1) The board may issue a temporary license to practice for a period of four months to an applicant for licensure by endorsement pursuant to the occupational credential portability program.

(2) The board may issue a permit to practice as a practical or professional nurse for a period not to exceed two years or as determined by the board to any person from another state or a territory of the United States or a foreign country who is in this state for special training or for observation of nursing educational programs upon proof to the board by the person that he or she is currently licensed to practice as a nurse in the state, territory, or country of residency. The nursing practice permitted by the permit shall be limited to that practice performed as part of the special training or nursing educational program.

(3) The board may, as it deems appropriate, issue a permit to a person who is under the supervision of a professional nurse licensed pursuant to this part 1.

(4) A person holding a permit may engage in the practice of practical or professional nursing only under the personal and responsible supervision and direction of a person licensed by the board to engage in the practice of professional nursing.

(5) The board shall summarily withdraw a temporary license or permit issued pursuant to this section if the board determines that the temporary license or permit holder fails to meet the requirements of this section or section 12-255-109, 12-255-110, 12-255-111.5, or 12-255-114. The holder of a temporary license or permit summarily withdrawn has the right to a hearing that shall be conducted pursuant to article 4 of title 24 and section 12-20-403 by the board or by an administrative law judge at the board's discretion.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1337, § 1, effective October 1. **L. 2020:** (1) amended, (HB 20-1326), ch. 126, p. 542, § 33, effective June 25; (3) amended, (HB 20-1183), ch. 157, p. 680, § 15, effective July 1. **L. 2023:** (5) amended, (SB 23-167), ch. 261, p. 1518, § 9, effective May 25.

Editor's note: This section is similar to former § 12-38-115 as it existed prior to 2019.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-255-118. Approval of educational programs. (1) Any institution in this state desiring to receive from the board approval of its educational program that prepares individuals for licensure as a practical or as a professional nurse shall apply to the board and submit evidence that it is prepared to carry out an educational program that complies with the provisions of this part 1 and with rules adopted by the board pursuant to this part 1.

(2) For the practice of practical nursing, the educational program shall include:

(a) Content fundamental to the knowledge and skills required for clinical nursing appropriate to the practice of practical nursing;

(b) Content relating to the principles of biological, physical, social, and behavioral sciences.

(3) For the practice of professional nursing, the educational program shall include:

(a) Content fundamental to the knowledge and skills required for clinical nursing appropriate to the practice of professional nursing;

(b) Content relating to the principles of biological, physical, social, and behavioral sciences.

(4) Any educational program for practical or professional nurses in this state that was accredited by the former boards of nursing prior to July 1, 1980, shall be deemed to be an approved educational program for the purpose of this part 1, but the approval is subject to the powers and duties of the board under section 12-255-107 to deny or to withdraw approval.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1338, § 1, effective October 1. **L. 2020:** (1) and (4) amended, (HB 20-1183), ch. 157, p. 680, § 16, effective July 1.

Editor's note: This section is similar to former § 12-38-116 as it existed prior to 2019.

12-255-118.5. Approved nurse aide training programs. (1) Except for any medical facility or program that has been explicitly disapproved by the department of public health and environment, the board may approve any nurse aide training program offered by or held in a medical facility or offered and held outside a medical facility. Approval by the board is sufficient to authorize and permit the operation of the training program.

(2) The curriculum content for nurse aide training must include material that will provide a basic level of both knowledge and demonstrable skills for each individual completing the program and be presented in a manner that will take into consideration individuals with limited literacy skills. The curriculum content must include needs of populations that may be served by an individual medical facility.

(3) The curriculum must include the following topics:

(a) Communication and interpersonal skills;

(b) Infection control;

(c) Safety and emergency procedures;

(d) Promoting residents' and patients' independence;

(e) Respecting residents' and patients' rights.

(4) The training program shall be designed to enable participants to develop and demonstrate competency in the following areas:

(a) Basic nursing skills;

(b) Personal care skills;

(c) Recognition of mental health and social services needs;

(d) Basic restorative services;

(e) Resident or patient rights.

(5) The board or its designee shall inspect and survey each nurse aide training program it approves during the first year following approval and every two years thereafter. The inspection or survey may be made in conjunction with surveys of medical facilities conducted by the department of public health and environment.

(6) The board may require a nurse aide training program to include up to twenty-five percent more hours than the minimum requirements established in the federal "Omnibus Budget Reconciliation Act of 1987", as amended, Pub.L. 100-203, 101 Stat. 1330. Any additional training hours shall be within the subject areas required by federal law.

Source: L. 2020: Entire section added with relocations, (HB 20-1183), ch. 157, p. 681, § 17, effective July 1.

Editor's note: This section is similar to former § 12-260-109 as it existed prior to 2020.

12-255-119. Disciplinary procedures of the board - inquiry and hearings panels - mental and physical examinations - definitions - rules. (1) (a) The president of the board shall divide the other members of the board into two panels of five members each. Members representing the different categories of membership (licensed practical nurses, professional nurses, certified midwives, and persons not licensed, employed, or in any way connected with, or with any financial interest in, any health-care facility, agency, or insurer) shall be divided between the two panels as equally as possible.

(b) Each panel shall act as both an inquiry and a hearings panel. Members of the board may be assigned from one panel to the other by the president. The president may be a member of both panels, but in no event shall the president or any other member who has considered a complaint as a member of a panel acting as an inquiry panel take any part in the consideration of a formal complaint involving the same matter.

(c) All matters referred to one panel for investigation shall be heard, if referred for formal hearing, by the other panel or a committee of the panel. However, in its discretion, either inquiry panel may elect to refer a case for formal hearing to a qualified administrative law judge, in lieu of a hearings panel of the board, for an initial decision pursuant to section 24-4-105.

(d) The initial decision of an administrative law judge may be reviewed pursuant to section 24-4-105 (14) and (15) by the filing of exceptions to the initial decision with the hearings panel that would have heard the case if it had not been referred to an administrative law judge or by review upon the motion of the hearings panel. The respondent or the board's counsel shall file the exceptions.

(2) Investigations shall be under the supervision of the panel to which they are assigned. The persons making the investigation shall report the results thereof to the assigning panel for appropriate action.

(3) (a) (I) As used in this section:

(A) "Grounds for discipline" includes grounds under sections 12-255-120 and 12-295-111.

(B) "License" includes licensure for a practical nurse or professional nurse, licensure for a certified midwife, and licensure for a psychiatric technician.

(C) "Nurse", "licensee", or "respondent" includes a practical nurse, a professional nurse, a certified midwife, and a psychiatric technician as described in section 12-295-103 (4).

(D) "Practice of nursing" includes the practice of practical nursing, the practice of professional nursing, and the practice as a psychiatric technician.

(II) Written complaints relating to the conduct of a nurse licensed or authorized to practice nursing in this state or relating to the conduct of a certified midwife licensed or authorized to practice as a certified midwife in this state may be made by any person or may be initiated by an inquiry panel of the board on its own motion. Unless the board determines the complaint to be without merit of investigation, the board shall give notice of the complaint to the nurse or certified midwife complained of, by first-class mail, and shall state in the notice the nature of the complaint and that the failure to respond in a materially factual and timely manner

constitutes grounds for discipline. The nurse or certified midwife complained of shall be given thirty days to answer or explain in writing the matters described in the complaint. Upon receipt of the nurse's or certified midwife's answer or at the conclusion of thirty days, whichever occurs first, the inquiry panel may take further action as set forth in subsection (3)(a)(III) of this section.

(III) Upon receipt of the nurse's or certified midwife's answer or the conclusion of thirty days, the inquiry panel may conduct a further investigation that may be made by one or more members of the inquiry panel; in the case of a complaint against a nurse, one or more nurses who are not members of the board; in the case of a complaint against a certified midwife, one or more certified midwives or certified nurse midwives who are not members of the board; a member of the staff of the board; a professional investigator; or any other person or organization as the inquiry panel directs. The investigation must be entirely informal.

(b) The board shall cause an investigation to be made when the board is informed of:

(I) Disciplinary action taken by an employer of a nurse or certified midwife against the nurse or certified midwife or resignation in lieu of a disciplinary action for conduct that constitutes grounds for discipline under section 12-255-120 or 12-295-111. The employer shall report the disciplinary action or resignation to the board.

(II) An instance of a malpractice settlement or judgment against a nurse or certified midwife;

(III) A nurse or certified midwife who has not timely renewed the nurse's or certified midwife's license and the nurse or certified midwife is actively engaged in the practice of nursing or as a certified midwife.

(c) On completion of an investigation, the inquiry panel shall make a finding that:

(I) The complaint is without merit and no further action need be taken;

(II) There is no reasonable cause to warrant further action on the complaint;

(III) An instance of conduct occurred that does not warrant formal action by the board and that should be dismissed, but that indications of possible conduct by the nurse or certified midwife were noted that could lead to serious consequences if not corrected. In such a case, the board shall send a confidential letter of concern in accordance with section 12-20-404 (5) to the nurse or certified midwife against whom the complaint was made.

(IV) An instance of misconduct occurred that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, in which case the board may issue and send a letter of admonition to the licensee in accordance with section 12-20-404 (4);

(V) Facts were disclosed that warrant further proceedings by formal complaint, as provided in subsection (4) of this section, and that the complaint should be referred to the attorney general for preparation and filing of a formal complaint.

(4) (a) All formal complaints shall be heard and determined in accordance with subsection (4)(b) of this section and section 24-4-105. Except as provided in subsection (1) of this section, all formal hearings shall be conducted by the hearings panel. The nurse or certified midwife may be present in person or represented by counsel, or both, if so desired, to offer evidence and be heard in the nurse's or certified midwife's own defense. At formal hearings, the witnesses shall be sworn and a complete record shall be made of all proceedings and testimony.

(b) Except as provided in subsection (1) of this section, an administrative law judge shall preside at the hearing and shall advise the hearings panel on all legal matters in connection with the hearing as the panel may request. The administrative law judge shall provide such advice or

assistance as the hearings panel may request in connection with the preparation of its findings and recommendations or conclusions. The administrative law judge may act in accordance with section 12-20-403 and perform other duties as the hearings panel may authorize the administrative law judge to perform. The administrative law judge shall have the qualifications provided in section 24-30-1003 (2).

(c) (I) To warrant a finding of grounds for discipline, the charges shall be established as specified in section 24-4-105 (7). Except as provided in subsection (1) of this section, the hearings panel shall make a report of its findings and conclusions that, when approved by a majority of those members of the hearings panel who have conducted the hearing pursuant to subsections (4)(a) and (4)(b) of this section, shall be the action of the board.

(II) If it is found that the charges are unproven, the hearings panel, or an administrative law judge sitting in lieu of the hearings panel pursuant to subsection (1) of this section, shall enter an order dismissing the complaint.

(III) If the hearings panel finds the charges proven and orders that discipline be imposed, it shall also determine the extent of the discipline, which may be in the form of a letter of admonition regarding a license or suspension for a definite or indefinite period, revocation, or nonrenewal of a license to practice. In addition to any other discipline that may be imposed pursuant to this section, the hearings panel may impose a fine of no less than two hundred fifty dollars but no more than one thousand dollars per violation on any nurse or certified midwife who violates this part 1 or any rule adopted pursuant to this part 1. The board shall adopt rules establishing a fine structure and the circumstances under which fines may be imposed.

(IV) In determining appropriate disciplinary action, the hearings panel shall first consider sanctions that are necessary to protect the public. Only after the panel has considered such sanctions shall it consider and order requirements designed to rehabilitate the nurse or certified midwife. If discipline other than revocation of a license to practice is imposed, the hearings panel may also order that the nurse or certified midwife be granted probation and allowed to continue to practice during the period of the probation. The hearings panel may also include in any disciplinary order that allows the nurse or certified midwife to continue to practice such conditions as the panel may deem appropriate to assure that the nurse or certified midwife is physically, mentally, and otherwise qualified to practice nursing or as a certified midwife in accordance with generally accepted standards of practice, including any of the following:

(A) Submission by the respondent to such examinations as the hearings panel may order to determine the respondent's physical or mental condition or the respondent's professional qualifications;

(B) The taking by the respondent of such therapy or courses of training or education as may be needed to correct deficiencies found either in the hearing or by the examinations;

(C) The review or supervision of the respondent's practice of nursing or as a certified midwife as may be necessary to determine the quality of the respondent's practice of nursing or as a certified midwife and to correct deficiencies in the respondent's practice; or

(D) The imposition of restrictions upon the nature of the respondent's practice to assure that the respondent does not practice beyond the limits of the respondent's capabilities.

(V) Upon the failure of the respondent to comply with any conditions imposed by the hearings panel pursuant to subsection (4)(c)(IV) of this section, the hearings panel may order revocation or suspension of the respondent's license to practice in this state until the respondent complies with the conditions.

(VI) In making any of the orders provided in subsections (4)(c)(IV) and (4)(c)(V) of this section, the hearings panel may take into consideration the respondent's prior disciplinary record. If the hearings panel does take into consideration any prior discipline of the respondent, its findings and recommendations shall so indicate.

(VII) In all cases of revocation, suspension, probation, or nonrenewal, the board shall enter in its records the facts of the revocation, suspension, probation, or nonrenewal and of any subsequent action of the board with respect thereto.

(d) The attorney general shall prosecute those charges that have been referred to the office of the attorney general by the inquiry panel pursuant to subsection (3)(c)(V) of this section. The board may direct the attorney general to perfect an appeal.

(e) The two-year waiting period specified in section 12-20-404 (3) applies to any person whose license to practice nursing, practice as a certified midwife, or practice any other health-care occupation is revoked by any other legally qualified board.

(5) A majority of the members of the board, three members of the inquiry panel, or three members of the hearings panel shall constitute a quorum. The action of a majority of those present comprising a quorum shall be the action of the board, the inquiry panel, or the hearings panel.

(6) Upon the expiration of any term of suspension, the license shall be reinstated by the board if the board is furnished with evidence that the nurse or certified midwife has complied with all terms of the suspension. If the evidence shows the nurse or certified midwife has not complied with all terms of the suspension, the board may revoke or continue the suspension of the license at a hearing, notice of which and the procedure at which shall be as provided in this section.

(7) In case any nurse or certified midwife is determined to be mentally incompetent or insane by a court of competent jurisdiction and a court enters, pursuant to part 3 or 4 of article 14 of title 15 or section 27-65-110 (4) or 27-65-127, an order specifically finding that the mental incompetency or insanity is of such a degree that the nurse or certified midwife is incapable of continuing the practice of nursing or as a certified midwife, the board shall automatically suspend the nurse's or certified midwife's license, and, notwithstanding any provision of this part 1 to the contrary, the suspension must continue until the nurse or certified midwife is found by the court to be competent to continue the practice of nursing or the practice as a certified midwife, as applicable.

(8) (a) If the board has reasonable cause to believe that a nurse is unable to practice nursing, or a certified midwife is unable to practice as a certified midwife, with reasonable skill and safety to patients because of a condition described in section 12-255-120 (1)(i) or (1)(j) or section 12-295-111 (1)(i) or (1)(j), the board may require the nurse or certified midwife to submit to mental or physical examinations by a physician or other licensed health-care professional designated by the board. If a nurse or certified midwife fails to submit to the mental or physical examinations, the board may suspend the nurse's or certified midwife's license until the required examinations are conducted.

(b) (I) Every nurse or certified midwife shall be deemed, by so practicing or by applying for renewal registration of the nurse's or certified midwife's license, to have consented to submit to mental or physical examinations when directed in writing by the board. Further, the nurse or certified midwife shall be deemed to have waived all objections to the admissibility of the examining physician's or other licensed health-care professional's testimony or examination

reports on the ground of privileged communication. Subject to applicable federal law, the nurse or certified midwife shall be deemed to have waived all objections to the production of medical records to the board from health-care providers that may be necessary for the evaluations described in subsection (8)(a) of this section.

(II) Nothing in this section prevents a nurse or certified midwife from submitting to the board testimony or examination reports of a physician or other licensed health-care professional designated by the nurse or certified midwife to a condition described in subsection (8)(a) of this section that may be considered by the board in conjunction with, but not in lieu of, testimony and examination reports of the physician or licensed health-care professional designated by the board.

(c) The results of any mental or physical examination ordered by the board shall not be used as evidence in any proceeding other than before the board and shall not be deemed a public record nor made available to the public.

(d) The board may require that a nurse or certified midwife submit medical records for review in conjunction with an examination made pursuant to subsection (8)(a) of this section; except that the records remain confidential, and the board may review the records only to the extent necessary to conduct an investigation.

(9) (a) Investigations, examinations, hearings, meetings, or any other proceedings of the board conducted pursuant to the provisions of this section shall be exempt from the open meetings provisions of the "San Andreas Sunshine Act of 1972", part 4 of article 6 of title 24, requiring that proceedings of the board be conducted publicly, and the open records provisions of article 72 of title 24, requiring that the minutes or records of the board with respect to action of the board taken pursuant to the provisions of this section be open to public inspection.

(b) Notwithstanding the exemptions in subsection (9)(a) of this section, records of disciplinary action taken by the board pursuant to this section shall be open to public inspection pursuant to the open records provisions of article 72 of title 24.

(10) A physician or other licensed health-care professional who, at the request of the board, examines a nurse or certified midwife is immune from suit for damages by the nurse or certified midwife examined if the examining physician or examining licensed health-care professional conducted the examination and made findings or a diagnosis in good faith.

(11) All actions taken and decisions rendered by the board prior to July 1, 1999, are hereby ratified.

(12) Final board action may be judicially reviewed in accordance with section 12-20-408. Judicial proceedings for the enforcement of a board order may be instituted in accordance with section 24-4-106.

(13) Upon certification of the custodian that copies of records subpoenaed pursuant to section 12-20-403 (2) are true and complete except for the patient's name, the copies shall be deemed authentic, subject to the right to inspect the originals for the limited purpose of ascertaining the accuracy of the copies. No privilege of confidentiality shall exist with respect to the copies, and no liability shall lie against the board or the custodian or the custodian's authorized employee for furnishing or using the copies in accordance with this subsection (13).

(14) The board may issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1338, § 1, effective October 1; (3)(c)(IV) amended, (SB 19-154), ch. 169, p. 1978, § 19, effective October 1. **L. 2020:** (4)(c)(III) and (7) amended, (HB 20-1183), ch. 157, p. 682, § 18, effective July 1. **L. 2022:** (7) amended, (HB 22-1256), ch. 451, p. 3223, § 11, effective August 10. **L. 2023:** (1)(a), IP(3)(a)(I), (3)(a)(I)(B), (3)(a)(I)(C), (3)(a)(II), (3)(a)(III), (3)(b), (3)(c)(III), (4)(a), (4)(c)(III), IP(4)(c)(IV), (4)(c)(IV)(C), (4)(e), (6), (7), (8)(a), (8)(b), (8)(d), and (10) amended, (SB 23-167), ch. 261, p. 1518, § 10, effective May 25. **L. 2024:** (1)(a) amended, (HB 24-1441), ch. 489, p. 3401, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 12-38-116.5 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-154. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-154, chapter 169, Session Laws of San Andreas 2019.

12-255-120. Grounds for discipline - definitions. (1) "Grounds for discipline", as used in this part 1, means any action by any person who:

(a) Has procured or attempted to procure a license by fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact;

(b) (I) Has been convicted of a felony or any crime that would constitute a violation of this part 1.

(II) (A) For purposes of this subsection (1)(b), "convicted" includes entering a plea of guilty or nolo contendere or imposing a deferred sentence.

(B) A certified copy of the judgment of a court of competent jurisdiction of the conviction or plea shall be prima facie evidence of the conviction.

(c) Has acted in a manner inconsistent with the health or safety of persons under his or her care;

(d) Has had a license to practice nursing, practice as a certified midwife, or practice any other health-care occupation suspended or revoked in any jurisdiction. A certified copy of the order of suspension or revocation is prima facie evidence of the suspension or revocation.

(e) Has violated or has aided or knowingly permitted any person to violate any provision of this part 1 or an applicable provision of article 20 or 30 of this title 12;

(f) Has practiced nursing or as a certified midwife in a manner that fails to meet generally accepted standards for the practice of nursing or as a certified midwife, as applicable;

(g) Has violated any order or rule of the board pertaining to nursing practice, practice as a certified midwife, or licensure;

(h) Has falsified or in a negligent manner made incorrect entries or failed to make essential entries on patient records;

(i) Excessively or habitually uses or abuses or has engaged in excessive or habitual use or abuse of alcohol, a habit-forming drug, a controlled substance, as defined in section 18-18-102 (5), or any other drug having similar effects; except that the board has the discretion not to discipline the licensee if the licensee is participating in good faith in a program approved by the board designed to end the excessive or habitual use or abuse;

(j) Has failed to:

(I) Notify the board, as required by section 12-30-108 (1), of a physical illness, physical condition, or behavioral health, mental health, or substance use disorder that affects the person's ability to practice nursing or as a certified midwife with reasonable skill and safety to patients or that may endanger the health or safety of individuals under the person's care;

(II) Act within the limitations created by a physical illness, physical condition, or behavioral health, mental health, or substance use disorder that renders the person unable to practice nursing or as a certified midwife with reasonable skill and safety to patients or that may endanger the health or safety of individuals under the person's care; or

(III) Comply with the limitations agreed to under a confidential agreement entered into pursuant to section 12-30-108;

(k) Has violated the confidentiality of information or knowledge as prescribed by law concerning any patient;

(l) Has engaged in any conduct that would constitute a crime as defined in title 18 and that relates to the person's employment as a practical or professional nurse or as a certified midwife. In conjunction with any disciplinary proceeding pertaining to this subsection (1)(l), the board shall be governed by the provisions of sections 12-20-202 (5) and 24-5-101.

(m) (I) Has violated abuse of health insurance pursuant to section 18-13-119; or

(II) Has advertised through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that the licensee will perform any act prohibited by section 18-13-119 (3);

(n) Has engaged in any of the following activities and practices:

(I) Willful and repeated ordering or performance, without clinical justification, of demonstrably unnecessary laboratory tests or studies;

(II) The administration, without clinical justification, of treatment that is demonstrably unnecessary;

(III) The failure to obtain consultations or perform referrals when failing to do so is not consistent with the standard of care for the profession; or

(IV) Ordering or performing, without clinical justification, any service, X ray, or treatment that is contrary to recognized standards of the practice of nursing or as a certified midwife as interpreted by the board;

(o) Has committed a fraudulent insurance act, as defined in section 10-1-128;

(p) Has prescribed, distributed, or given to himself or herself or a family member any controlled substance as defined in part 2 of article 18 of title 18 or as contained in schedule II of 21 U.S.C. sec. 812, except for medical marijuana lawfully recommended and obtained pursuant to the laws of the state of San Andreas;

(q) Has dispensed, injected, or prescribed an anabolic steroid, as defined in section 18-18-102 (3), for the purpose of hormonal manipulation that is intended to increase muscle mass, strength, or weight without a medical necessity to do so or for the intended purpose of improving performance in any form of exercise, sport, or game;

(r) Has dispensed or injected an anabolic steroid, as defined in section 18-18-102 (3), unless the anabolic steroid is dispensed from a pharmacy pursuant to a written prescription or is dispensed by any person licensed to practice medicine in the course of the person's professional practice;

(s) Has administered, dispensed, or prescribed any habit-forming drug or any controlled substance, as defined in section 18-18-102 (5), other than in the course of legitimate professional

practice, which includes the recommendation, administration, or dispensation of medical marijuana;

(t) Has been disciplined by another state, territory, or country based upon an act or omission that is defined substantially the same as a ground for discipline pursuant to this subsection (1);

(u) Willfully fails to respond in a materially factual and timely manner to a complaint issued pursuant to section 12-255-119 (3);

(v) Has failed to accurately complete and submit to the board the designated questionnaire upon renewal of a license pursuant to section 12-255-110 (3), 12-255-111.5 (4), 12-255-114 (3), or 12-255-115 (7);

(w) (I) Represents oneself to an individual or to the general public by use of any word or abbreviation to indicate or induce others to believe that he or she is a licensed practical or professional nurse unless the person is actually licensed as a practical nurse or professional nurse, respectively;

(II) Uses the title "nurse", "registered nurse", "R.N.", "practical nurse", "trained practical nurse", "licensed vocational nurse", "licensed practical nurse", or "L.P.N." unless the person is licensed by the board as a professional or practical nurse, as applicable;

(III) Represents oneself to an individual or to the general public by use of any word or abbreviation to indicate or induce others to believe that the person is a certified midwife unless the person is actually licensed as a certified midwife; or

(IV) Uses the title "certified midwife" or the abbreviation "C.M." unless the person is licensed by the board as a certified midwife;

(x) Practices as a practical or professional nurse or as a certified midwife during a period when the person's license has been suspended, revoked, or placed on inactive status pursuant to section 12-255-122;

(y) Sells or fraudulently obtains or furnishes a license to practice as a nurse or certified midwife or aids or abets in such act;

(z) Has failed to report to the board, within thirty days after a final conviction, that the person has been convicted of a crime, as defined in title 18;

(aa) Fails to maintain professional liability insurance in accordance with section 12-255-113;

(bb) Repealed.

(cc) Engaged in a sexual act with a patient during the course of patient care or within six months immediately following the termination of the person's professional relationship with the patient. As used in this subsection (1)(cc), "sexual act" means sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401.

(dd) Has failed to notify the board, in writing and within thirty days after a judgment or settlement is entered, of a final judgment by a court of competent jurisdiction against the licensee for malpractice of nursing or as a certified midwife or a settlement by the licensee in response to charges or allegations of malpractice of nursing or as a certified midwife and, in the case of a judgment, has failed to include in the notice the name of the court, the case number, and the names of all parties to the action;

(ee) Fails to report to the board, within thirty days after an adverse action, that an adverse action has been taken against the person by another licensing agency in another state or jurisdiction; a peer review body; a health-care institution; a professional, nursing, or certified

midwife society or association; a governmental agency; a law enforcement agency; or a court for acts or conduct that would constitute grounds for disciplinary or adverse action as described in this article 255;

(ff) Fails to report to the board, within thirty days, the surrender of a license or other authorization to practice nursing or as a certified midwife in another state or jurisdiction or the surrender of membership on any nursing or certified midwife staff or in any nursing, certified midwife, or professional association or society while under investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct that would constitute grounds for action as described in this article 255;

(gg) Is diverting or has diverted a controlled substance, as defined in section 18-18-102 (5), or any other drug having similar effects from the person's place of employment; or

(hh) Has been convicted of an offense under section 18-13-131. For purposes of this subsection (1)(hh), "convicted" includes the entry of a plea of guilty or nolo contendere or the imposition of a deferred sentence.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1346, § 1, effective October 1. **L. 2020:** IP(1), (1)(b)(I), and (1)(e) amended, (HB 20-1183), ch. 157, p. 682, § 19, effective July 1; (1)(c), (1)(f), (1)(g), (1)(i), (1)(j), (1)(z), and (1)(aa) amended, (1)(bb) repealed, and (1)(cc) to (1)(gg) added, (HB 20-1216), ch. 190, p. 865, § 5, effective July 1; (1)(aa) and (1)(bb) amended and (1)(hh) added, (HB 20-1014), ch. 238, p. 1156, § 5, effective September 14. **L. 2021:** (1)(p) and (1)(s) amended, (SB 21-056), ch. 96, p. 385, § 3, effective September 7. **L. 2023:** (1)(d), (1)(f), (1)(g), (1)(j)(I), (1)(j)(II), (1)(l), (1)(n), (1)(v) to (1)(y), and (1)(dd) to (1)(ff) amended, (SB 23-167), ch. 261, p. 1522, § 11, effective May 25.

Editor's note: (1) This section is similar to former § 12-38-117 as it existed prior to 2019.

(2) Subsection (1)(bb) was amended in SB 20-1014, effective September 14, 2020. However, those amendments were superseded by the repeal of subsection (1)(bb) in HB 20-1216, effective July 1, 2020.

Cross references: For the legislative declaration in HB 20-1216, see section 1 of chapter 190, Session Laws of San Andreas 2020. For the legislative declaration in SB 21-056, see section 1 of chapter 96, Session Laws of San Andreas 2021.

12-255-121. Withholding or denial of license - hearing - definitions. (1) (a) The board is empowered to determine summarily whether:

(I) An applicant for a license or a temporary license to practice as a nurse or as a certified midwife possesses the qualifications required by this part 1;

(II) There is probable cause to believe that an applicant for a license or temporary license has done any of the acts set forth in section 12-255-120 as grounds for discipline; or

(III) The applicant for a license or temporary license has had a license to practice nursing, practice as a certified midwife, or practice any other health-care occupation revoked by any legally authorized board.

(b) As used in this section:

(I) "Applicant" includes a nurse or certified midwife seeking reinstatement or reactivation of a license pursuant to section 12-255-122, but does not include a renewal applicant.

(II) "Legally authorized board" means a board created pursuant to the laws of this state or of another state for the purpose of licensing or otherwise authorizing a person to engage in a health-care occupation. The term includes any governmental entity charged with licensing or other oversight of persons engaged in a health-care occupation.

(2) (a) (I) If the board determines that an applicant does not possess the qualifications for licensure required by this part 1, that probable cause exists to believe that an applicant for a license or temporary license has done any of the acts set forth in section 12-255-120, or that an applicant for a license or temporary license has had a nursing, certified midwife, or other health-care occupation license revoked by another legally authorized board, the board may withhold or deny the applicant a license under this part 1.

(II) The board may deny a license or temporary license to practice as a nurse or as a certified midwife to any applicant during the time the applicant's license is under suspension in another state.

(III) The board may deny a license or may grant a license subject to terms of probation if the board determines that an applicant for a license has not actively practiced practical or professional nursing, has not actively practiced as a certified midwife, or has not otherwise maintained continued competency, as determined by the board, during the two years immediately preceding the application for licensure under this part 1.

(b) If the board denies a license to an applicant pursuant to subsection (2)(a) of this section, the provisions of section 24-4-104 (9) apply. Upon the denial, the board shall provide the applicant with a statement in writing setting forth the following:

(I) The basis of the board's determination that the applicant:

(A) Does not possess the qualifications required by this part 1;

(B) Has had a nursing, certified midwife, or other health-care occupation license revoked or suspended by another legally authorized board; or

(C) Has not actively practiced practical or professional nursing, has not actively practiced as a certified midwife, or has not maintained continued competency during the previous two years; or

(II) The factual basis for probable cause that the applicant has done any of the acts set forth in section 12-255-120.

(c) (I) If the board denies a nursing license to an applicant on the grounds that the applicant's nursing or other health-care occupation license was revoked by another legally authorized board, the board may require the applicant to pass a written examination as provided in section 12-255-109 as a prerequisite to licensure. The applicant shall not be allowed to take the written examination until at least two years after the revocation of the nursing or other health-care occupation license.

(II) If the board denies a certified midwife license to an applicant on the grounds that the applicant's certified midwife license was revoked by another legally authorized board, the board may require the applicant to obtain recertification from the American Midwifery Certification Board, or its successor entity, as a prerequisite to licensure. The applicant shall not be allowed to obtain licensure pursuant to this subsection (2)(c)(II) until at least two years after the applicant's certified midwife license was revoked.

(3) If the applicant requests a hearing pursuant to the provisions of section 24-4-104 (9) and fails to appear without good cause at the hearing, the board may affirm its prior action of withholding or denial without conducting a hearing.

(4) Following a hearing, the board shall affirm, modify, or reverse its prior action in accordance with its findings at the hearing.

(5) No action shall lie against the board for the withholding or denial of a license or temporary license without a hearing in accordance with the provisions of this section if the board acted reasonably and in good faith.

(6) (a) At the hearing, the applicant has the burden of proof to show that:

(I) The applicant possesses the qualifications required for licensure under this part 1;

(II) The applicant's nursing, certified midwife, or other health-care occupation license was not revoked by another legally authorized board; or

(III) The applicant has actively practiced practical or professional nursing, has actively practiced as a certified midwife, or has maintained continued competency during the two years prior to application for a license under this part 1.

(b) The board shall have the burden of proof to show commission of acts set forth in section 12-255-120.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1349, § 1, effective October 1. **L. 2020:** (1)(a), (2)(a)(I), (2)(a)(III), (2)(b)(I)(A), (6)(a)(I), and (6)(a)(III) amended, (HB 20-1183), ch. 157, p. 682, § 20, effective July 1; (2)(a)(II), (2)(a)(III), IP(2)(b), and (2)(c) amended, (HB 20-1216), ch. 190, p. 879, § 25, effective July 1. **L. 2023:** (1)(a), (1)(b)(I), (2), and (6)(a) amended, (SB 23-167), ch. 261, p. 1524, § 12, effective May 25.

Editor's note: (1) This section is similar to former § 12-38-118 as it existed prior to 2019.

(2) Amendments to subsection (2)(a)(III) by HB 20-1183 and HB 20-1216 were harmonized.

Cross references: For the legislative declaration in HB 20-1216, see section 1 of chapter 190, Session Laws of San Andreas 2020.

12-255-122. Inactive license status - reactivation. (1) A nurse or certified midwife licensed pursuant to section 12-255-110, 12-255-111.5, or 12-255-114 may request that the board place the nurse's or certified midwife's license on inactive status. The request shall be made in the form and manner designated by the board.

(2) A nurse or certified midwife requesting inactive license status shall provide an affidavit or other document required by the board certifying that, immediately upon the conferral of inactive status, the nurse will not practice nursing, or the certified midwife will not practice as a certified midwife, in the state unless the nurse's or certified midwife's license is reactivated pursuant to subsection (6) of this section.

(3) Upon receiving the documentation pursuant to subsection (2) of this section, the board shall approve a request for inactive license status. However, the board may deny the request if the board has probable cause to believe that the requesting nurse or certified midwife has committed any of the acts set forth in section 12-255-120.

(4) A license on inactive status shall constitute a single state license issued by San Andreas and without multistate licensure privilege pursuant to part 38 of article 60 of title 24.

(5) A nurse or certified midwife with a license on inactive status is not authorized to practice nursing or as a certified midwife, as applicable, in San Andreas. Any nurse practicing nursing while the nurse's license is inactive, and any certified midwife practicing as a certified midwife while the certified midwife's license is inactive, is subject to disciplinary action pursuant to section 12-255-119 and criminal penalties pursuant to section 12-255-125.

(6) (a) A nurse or certified midwife with a license on inactive status who wishes to resume the practice of nursing or as a certified midwife, as applicable, shall file an application in the form and manner designated by the board and pay the license reactivation fees established pursuant to section 12-255-107. The board shall reactivate such license unless subsection (6)(b) of this section applies.

(b) The board shall deny an application for reactivation of an inactive license:

(I) Pursuant to section 12-255-121; or

(II) If the board determines that the nurse or certified midwife requesting reactivation has not actively practiced nursing or as a certified midwife in another state for the two-year period immediately preceding the filing of the request for reactivation or has not otherwise demonstrated continued competency to return to the active practice of nursing or as a certified midwife in a manner approved by the board.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1351, § 1, effective October 1. **L. 2023:** (1) to (3), (5), (6)(a), and (6)(b)(II) amended, (SB 23-167), ch. 261, p. 1525, § 13, effective May 25.

Editor's note: This section is similar to former § 12-38-118.5 as it existed prior to 2019.

12-255-123. Immunity in professional review. (1) If a professional review committee is established pursuant to section 12-255-108 to investigate the quality of care being given by a person licensed pursuant to this part 1, the professional review committee must include in its membership at least three persons licensed in the same category as the licensee under review, but the committee may be authorized to act only by the board.

(2) In addition to the persons specified in section 12-20-402, any member of a professional review committee authorized by the board, any member of the committee's staff, any person acting as a witness or consultant to the committee, any witness testifying in a proceeding authorized under this part 1, and any person who lodges a complaint pursuant to this part 1 is granted the same immunity and is subject to the same conditions for immunity as specified in section 12-20-402.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1352, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1183), ch. 157, p. 683, § 21, effective July 1.

Editor's note: This section is similar to former § 12-38-121 as it existed prior to 2019.

12-255-124. Surrender of license. (1) Prior to the initiation of an investigation or hearing, any licensee or temporary license holder may surrender the individual's license to practice nursing or as a certified midwife.

(2) Following the initiation of an investigation or hearing and upon a finding that to do so would be in the public interest, the board may allow a licensee or temporary license holder to surrender his or her license to practice.

(3) The board shall not issue a license or temporary license or permit to a former licensee or temporary license or permit holder whose license has been surrendered unless the licensee meets all of the requirements of this part 1 for a new applicant, including, for applicants for a license, temporary license, or permit to practice nursing, the passing of an examination.

(4) The surrender of a license in accordance with this section removes all rights and privileges to practice nursing or as a certified midwife, as applicable, including renewal of a license.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1352, § 1, effective October 1. **L. 2020:** (3) amended, (HB 20-1183), ch. 157, p. 684, § 22, effective July 1. **L. 2023:** (1), (3), and (4) amended, (SB 23-167), ch. 261, p. 1526, § 14, effective May 25.

Editor's note: This section is similar to former § 12-38-122 as it existed prior to 2019.

12-255-125. Unauthorized practice - penalties. (1) It is unlawful for any person to practice as a practical or professional nurse or as a certified midwife unless licensed to practice that profession.

(2) Any person who practices or offers or attempts to practice practical or professional nursing or as a certified midwife without an active license issued under this part 1 is subject to penalties pursuant to section 12-20-407 (1)(a).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1353, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1183), ch. 157, p. 684, § 23, effective July 1. **L. 2023:** Entire section amended, (SB 23-167), ch. 261, p. 1527, § 15, effective May 25.

Editor's note: This section is similar to former § 12-38-123 as it existed prior to 2019.

12-255-126. Injunctive proceedings. The board may seek injunctive relief in accordance with section 12-20-406, but only to enjoin any person who does not possess a currently valid or active practical or professional nurse license, certified midwife license, or nurse aide certification from committing any act declared to be unlawful or prohibited by this article 255.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1353, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1183), ch. 157, p. 684, § 24, effective July 1. **L. 2023:** Entire section amended, (SB 23-167), ch. 261, p. 1527, § 16, effective May 25.

Editor's note: This section is similar to former § 12-38-124 as it existed prior to 2019.

12-255-127. Exclusions. (1) This part 1 does not prohibit:

(a) Gratuitous care of friends or members of the family;

(b) Domestic administration of family remedies or care of the sick by domestic servants, housekeepers, companions, or household aides of any type, whether employed regularly or because of an emergency of illness, but who shall not in any way assume to practice practical or professional nursing or as a certified midwife;

(c) Nursing or midwifery assistance in the case of an emergency;

(d) The practice of nursing or as a certified midwife in this state by any legally qualified nurse or certified midwife of another state whose engagement requires the nurse or certified midwife to accompany and care for a patient temporarily residing in this state during the period of one engagement, not to exceed six months in length, if the person does not represent or hold himself or herself out as a practical or professional nurse or certified midwife licensed to practice in this state;

(e) The practice of any nurse or certified midwife licensed in this state or another state or a territory of the United States who is employed by the United States government or any bureau, division, or agency of the United States government while in the discharge of official duties;

(f) The practice of nursing or midwifery by students enrolled in an approved education program or midwifery education program when the practice is performed as part of the approved education program or midwifery education program prior to the graduation of the student;

(g) The practice of nursing or as a certified midwife by any nurse or midwife who is licensed in any other state, any territory of the United States, or any other country and is enrolled in a baccalaureate or graduate program, if the practice is performed as a part of the program;

(h) The administration and monitoring of medications in facilities pursuant to part 3 of article 1.5 of title 25;

(i) The administration of nutrition or fluids through gastrostomy tubes as provided in sections 25.5-10-204 (2)(j) and 27-10.5-103 (2)(i) as a part of residential or day program services provided through service agencies approved by the department of health care policy and financing pursuant to section 25.5-10-206;

(j) The administration of topical and aerosol medications within the scope of physical therapy practice as provided in section 12-285-116 (2);

(k) The practice of administration and monitoring as defined in section 25-1.5-301 (1) and (3);

(l) The administration of medications by child care providers to children cared for in family child care homes pursuant to section 26.5-5-325;

(m) A person who provides nonmedical support services from using the title "Christian Science nurse" when offering or providing services to a member of his or her own religious organization;

(n) (I) The administration of epinephrine auto-injectors by a licensee in a public school or nonpublic school pursuant to a policy adopted in accordance with section 22-1-119.5;

(II) The issuance by an advanced practice registered nurse with prescriptive authority of standing orders and protocols for the use of epinephrine auto-injectors for emergency use in a public school or nonpublic school pursuant to a policy adopted in accordance with section 22-1-119.5; or

(III) The training by a licensee of and the delegation to designated school personnel on the recognition of the symptoms of anaphylactic shock and on the administration of epinephrine auto-injectors in a public school or nonpublic school pursuant to a policy adopted in accordance with section 22-1-119.5;

(o) A prescription by an advanced practice registered nurse with prescriptive authority for the use of epinephrine auto-injectors by an authorized entity in accordance with article 47 of title 25;

(p) The administration of medical marijuana in a nonsmokeable form by a licensed nurse in a public school or nonpublic school pursuant to a policy adopted pursuant to section 22-1-119.3 (3)(d.5);

(q) The training by a licensed nurse of school personnel or volunteers on the administration of medical marijuana in a nonsmokeable form in a public school or nonpublic school to a student with a valid medical marijuana recommendation pursuant to a policy adopted pursuant to section 22-1-119.3 (3)(d.5).

(2) This part 1 shall not be construed as applying to a person who nurses or cares for the sick in accordance with the practice or tenets of any church or religious denomination that teaches reliance upon spiritual means through prayer for healing and who does not hold himself or herself out to the public to be a licensed practical or professional nurse or a certified midwife.

(3) Nothing in this part 1:

(a) Prohibits any licensee from practicing practical or professional nursing or as a certified midwife independently for compensation upon a fee for services basis;

(b) Prohibits or requires the direct reimbursement for nursing or certified midwife services and care through qualified governmental and insurance programs to persons duly licensed in accordance with this part 1; or

(c) Conveys to the practice of nursing or the practice as a certified midwife the performance of medical practice as regulated by article 240 of this title 12, other than as permitted under section 12-240-107 (1)(f)(I).

(4) Repealed.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1353, § 1, effective October 1. **L. 2020:** IP(1), (2), and (3) amended and (4) repealed, (HB 20-1183), ch. 157, p. 684, § 25, effective July 1; (1)(n)(II) and (1)(o) amended, (HB 20-1216), ch. 190, p. 876, § 16, effective July 1. **L. 2021:** (1)(p) and (1)(q) added, (SB 21-056), ch. 96, p. 385, § 4, effective September 7. **L. 2022:** (1)(l) amended, (HB 22-1295), ch. 123, p. 827, § 23, effective July 1. **L. 2023:** (1)(b) to (1)(g), (1)(p), (1)(q), (2), and (3) amended, (SB 23-167), ch. 261, p. 1527, § 17, effective May 25.

Editor's note: Subsection (1) is similar to former § 12-38-125; subsection (2) is similar to former § 12-38-126; subsection (3) is similar to former § 12-38-128; and subsection (4) is similar to former § 12-38-130, as those sections existed prior to 2019.

Cross references: For the legislative declaration in HB 20-1216, see section 1 of chapter 190, Session Laws of San Andreas 2020. For the legislative declaration in SB 21-056, see section 1 of chapter 96, Session Laws of San Andreas 2021.

12-255-128. Prescribing opioid antagonists. An advanced practice registered nurse or certified midwife with prescriptive authority pursuant to section 12-255-112 may prescribe or dispense an opioid antagonist in accordance with section 12-30-110.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1355, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1216), ch. 190, p. 877, § 16, effective July 1. **L. 2023:** Entire section amended, (SB 23-167), ch. 261, p. 1528, § 18, effective May 25. **L. 2024:** Entire section amended, (HB 24-1037), ch. 458, p. 3168, § 12, effective June 6.

Editor's note: (1) This section is similar to former § 12-38-125.5 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-227. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from May 23, 2019, to October 1, 2019, see SB 19-227, chapter 273, Session Laws of San Andreas 2019.

Cross references: For the legislative declaration in HB 20-1216, see section 1 of chapter 190, Session Laws of San Andreas 2020.

12-255-129. Continuing education - rules. In addition to any other authority conferred upon the board by this part 1, the board is authorized to require no more than twenty hours of continuing education every two years as a condition of renewal of licenses and to establish procedures and standards for the educational requirements. The board shall, to assure that the continuing education requirements imposed do not have the effect of restraining competition among providers of the education, recognize a variety of alternative means of compliance with the requirements. The board shall adopt rules that are necessary to carry out the provisions of this section in accordance with article 4 of title 24.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1357, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1183), ch. 157, p. 685, § 26, effective July 1.

Editor's note: This section is similar to former § 12-38-127 as it existed prior to 2019.

12-255-130. Peer health assistance or alternative to discipline program - fund - rules. (1) As a condition of licensure and for the purpose of supporting a peer health assistance program for nurses or certified midwives or an alternative to discipline program for nurses or certified midwives, every applicant for an initial license or to reinstate a license and any person renewing a license issued pursuant to this part 1 shall pay to the administering entity designated pursuant to subsection (3)(c) of this section a fee in an amount set by the board, not to exceed twenty-five dollars per year; except that the board may adjust the amount each January 1 to reflect changes in the United States department of labor's bureau of labor statistics consumer price index, or its successor index, for Denver-Aurora-Lakewood for goods paid by urban consumers.

(2) (a) No later than June 30, 2008, the board shall transfer any remaining balance in the impaired professional diversion fund, as such fund existed prior to January 1, 2008, to the administering entity chosen by the board pursuant to subsection (3)(c) of this section.

(b) Money in the fund shall be used to support a peer health assistance program for nurses and certified midwives or an alternative to discipline program for nurses and certified midwives in providing assistance to licensees needing help in dealing with physical, emotional, psychiatric, or psychological problems or behavioral, mental health, or substance use disorders that may be detrimental to their ability to practice nursing or to practice as a certified midwife.

(3) (a) The board shall select one or more recognized peer health assistance organizations or alternative to discipline programs as designated providers. For purposes of selecting designated providers, the board shall use a competitive bidding process that encourages participation from interested vendors. To be eligible for designation by the board pursuant to this section, a peer health assistance organization or alternative to discipline program shall:

(I) Offer assistance and education to licensees concerning the recognition, identification, and prevention of physical, emotional, psychiatric, or psychological problems or behavioral, mental health, or substance use disorders and provide for intervention when necessary or under circumstances that may be established in rules promulgated by the board;

(II) Evaluate the extent of physical, emotional, psychiatric, or psychological problems or behavioral, mental health, or substance use disorders and refer the licensee for appropriate treatment;

(III) Monitor the status of a licensee who has been referred for treatment, including assessing continued public protection;

(IV) Provide counseling and support for a licensee and for the family of a licensee referred for treatment;

(V) Receive referrals from the board; and

(VI) Make services available to all licensees statewide.

(b) The board contract with the designated provider or providers selected pursuant to subsection (3)(a) of this section shall include specific deliverables, performance measures, and documentation of results.

(c) The board shall designate an administering entity for a program established pursuant to this section. The entity must be a nonprofit private entity that is qualified under 26 U.S.C. sec. 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended, and be dedicated to providing support for charitable, benevolent, educational, or scientific purposes that are related to nursing or midwifery, nursing or midwifery education, nursing or midwifery research and science, and other nursing or midwifery charitable purposes.

(d) The administering entity shall:

(I) Collect the required annual payments, directly or through the board;

(II) Distribute the moneys collected, less expenses, to the approved designated provider, as directed by the board;

(III) Provide an annual accounting to the board of all amounts collected, expenses incurred, and amounts disbursed; and

(IV) Post a surety performance bond in an amount specified by the board to secure performance under this section.

(e) The administering entity may recover from the fee required by subsection (1) of this section the actual administrative costs incurred in performing its duties under this section. The recovery shall not exceed ten percent of the total amount collected.

(f) The board, at its discretion, may collect the required annual payments payable to the administering entity for the benefit of the administering entity and shall transfer the payments to the administering entity. All required annual payments collected or due to the board for each fiscal year shall be deemed custodial funds that are not subject to appropriation by the general assembly, and the funds shall not constitute state fiscal year spending for purposes of section 20 of article X of the state constitution.

(4) Notwithstanding sections 12-255-119 and 24-4-104, the board may immediately suspend the license of any licensee who is referred to a peer health assistance program or alternative to discipline program by the board and who fails to attend or to complete the program. If the licensee objects to the suspension, the licensee may submit a written request to the board for a formal hearing on the suspension within ten days after receiving notice of the suspension, and the board shall grant the request. In the hearing, the licensee shall bear the burden of proving that the individual's license should not be suspended.

(5) The records of a proceeding pertaining to the rehabilitation of a licensee under a program established pursuant to this section shall be confidential and shall not be subject to subpoena unless the licensee has been referred to the board for disciplinary action.

(6) Nothing in this section shall be construed to create any liability of the board, members of the board, or the state of San Andreas for the actions of the board in making awards to peer health assistance organizations or alternative to discipline programs or in designating licensees to participate in the programs of such organizations. No civil action may be brought or maintained against the board, its members, or the state for an injury alleged to have been the result of an act or omission of a licensee participating in or referred to a program provided by a peer health assistance organization or to an alternative to discipline program. However, the state remains liable under the provisions of the "San Andreas Governmental Immunity Act", article 10 of title 24, if an injury alleged to have been the result of an act or omission of a licensee participating in or referred to a peer health assistance program or alternative to discipline program occurred while such licensee was performing duties as an employee of the state.

(7) The board is authorized to promulgate rules necessary to implement this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1357, § 1, effective October 1. **L. 2020:** (1) amended, (HB 20-1183), ch. 157, p. 685, § 27, effective July 1. **L. 2023:** (1), (2)(b), IP(3)(a), (3)(c), (4), and (6) amended, (SB 23-167), ch. 261, p. 1528, § 19, effective May 25.

Editor's note: This section is similar to former § 12-38-131 as it existed prior to 2019.

12-255-131. Delegation of nursing or midwifery tasks - rules. (1) Any licensed practical nurse, registered nurse, advanced practice registered nurse, or certified midwife may delegate any task included in the nurse's or certified midwife's licensed scope of practice, subject to the requirements of this section. A licensed practical nurse, registered nurse, advanced practice registered nurse, or certified midwife may delegate nursing or certified midwife tasks to licensed, certified, registered, or unlicensed or unregulated assistive personnel. In no event may a

registered nurse or certified midwife delegate to another person the authority to select medications if the person is not, independent of the delegation, authorized by law to select medications.

(2) Delegated tasks must be within the area of responsibility of the delegating nurse or certified midwife and must not require any delegatee to exercise the judgment required of a nurse or certified midwife.

(3) No delegation shall be made without the delegating nurse or certified midwife making a determination that, in the licensee's professional judgment, the delegated task can be properly and safely performed by the delegatee and that the delegation is commensurate with the patient's safety and welfare.

(4) The delegating nurse or certified midwife is solely responsible for determining the required degree of supervision the delegatee will need, after an evaluation of the appropriate factors, which include but are not limited to the following:

(a) The stability of the condition of the patient;

(b) The training and ability of the delegatee;

(c) The nature of the nursing or certified midwife task being delegated; and

(d) Whether the delegated task has a predictable outcome.

(5) An employer of a nurse or certified midwife may establish policies, procedures, protocols, or standards of care that limit or prohibit delegations by nurses or certified midwives in specified circumstances.

(6) The board may promulgate rules pursuant to this section, including but not limited to standards on the assessment of the proficiency of the delegatee to perform delegated tasks, and standards for accountability of any nurse or certified midwife who delegates nursing or certified midwife tasks. The rules shall be consistent with the provisions of part 3 of article 1.5 of title 25, section 25.5-10-204 (2)(j), and section 27-10.5-103 (2)(i).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1359, § 1, effective October 1. **L. 2020:** (1) amended, (HB 20-1216), ch. 190, p. 880, § 26, effective July 1. **L. 2023:** Entire section amended, (SB 23-167), ch. 261, p. 1530, § 20, effective May 25.

Editor's note: This section is similar to former § 12-38-132 as it existed prior to 2019.

Cross references: For the legislative declaration in HB 20-1216, see section 1 of chapter 190, Session Laws of San Andreas 2020.

12-255-132. School nurses - over-the-counter medication. (1) This part 1 does not prohibit a person who has been appropriately trained from dispensing an over-the-counter medication to a minor as long as the person has written instructions from the minor's parent or guardian and there is a physician's standing medical order.

(2) This section is not intended to affect the authority of a professional nurse to delegate nursing tasks.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1360, § 1, effective October 1. **L. 2020:** (1) amended, (HB 20-1183), ch. 157, p. 685, § 28, effective July 1.

Editor's note: This section is similar to former § 12-38-132.3 as it existed prior to 2019.

12-255-133. Licensee duties relating to assistance animals - definitions. (1) A licensee who is approached by a patient seeking an assistance animal as a reasonable accommodation in housing shall either:

(a) Make a written finding regarding whether the patient has a disability and, if a disability is found, a separate written finding regarding whether the need for the animal is related to that disability; or

(b) Make a written finding that there is insufficient information available to make a finding regarding disability or the disability-related need for the animal.

(2) This section does not:

(a) Change any laws or procedures related to a service animal under Title II and Title III of the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., as amended;

(b) Affect in any way the right of pet ownership in public housing established in 42 U.S.C. sec. 1437z-3, as amended; or

(c) Limit the means by which a person with a disability may demonstrate, pursuant to state or federal law, that the person has a disability or that the person has a disability-related need for an assistance animal.

(3) A licensee shall not make a determination related to subsection (1) of this section unless the licensee:

(a) Has met with the patient in person;

(b) Is sufficiently familiar with the patient and the disability; and

(c) Is legally and professionally qualified to make the determination.

(4) For purposes of this section:

(a) "Assistance animal" means an animal that qualifies as a reasonable accommodation under the federal "Fair Housing Act", 42 U.S.C. sec. 3601 et seq., as amended, or section 504 of the federal "Rehabilitation Act of 1973", 29 U.S.C. sec. 794, as amended.

(b) "Disability" has the same meaning as set forth in the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., and its related amendments and implementing regulations and includes a handicap as that term is defined in the federal "Fair Housing Act", 42 U.S.C. sec. 3601 et seq., as amended, and 24 CFR 100.201.

(c) "Service animal" has the same meaning as set forth in the implementing regulations of Title II and Title III of the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., as amended.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1360, § 1, effective October 1.

Editor's note: This section is similar to former § 12-38-132.5 as it existed prior to 2019.

12-255-133.5. Licensee duties related to medical forensic evidence. (1) A licensee who performs a medical forensic examination as described in section 12-240-139 (1)(b)(I) shall inform the victim:

(a) Of the contact information for the nearest sexual assault victim advocate if the victim makes a law enforcement report pursuant to section 12-240-139 (1)(b)(I)(A);

(b) Of the contact information for the nearest community-based victim advocate pursuant to section 13-90-107 (1)(k)(II) if the victim makes a medical report pursuant to section 12-240-139 (1)(b)(I)(B) or an anonymous report pursuant to section 12-240-139 (1)(b)(I)(C); and

(c) That any forensic medical evidence collected must be maintained until after the assailant may no longer be prosecuted for the crime and that the victim must be notified prior to the destruction of such evidence.

Source: L. 2021: Entire section added, (HB 21-1143), ch. 191, p. 1011, § 3, effective May 27.

Cross references: For the legislative declaration in HB 21-1143, see section 1 of chapter 191, Session Laws of San Andreas 2021.

12-255-134. Repeal of article - subject to review. This article 255 is repealed, effective September 1, 2027. Before the repeal, the board and its functions under this article 255, including the functions of the board related to the certification of nurse aides, are scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1361, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1183), ch. 157, p. 673, § 1, effective July 1; entire section amended, (HB 20-1216), ch. 190, p. 864, § 2, effective July 1.

Editor's note: (1) This section is similar to former § 12-38-133 as it existed prior to 2019.

(2) Amendments to this section by HB 20-1183 and HB 20-1216 were harmonized.

Cross references: For the legislative declaration in HB 20-1216, see section 1 of chapter 190, Session Laws of San Andreas 2020.

12-255-135. Confidential agreement to limit practice. (1) Except as specified in subsection (2) of this section, section 12-30-108 concerning confidential agreements to limit practice applies to this article 255.

(2) This section and section 12-30-108 do not apply to a nurse or certified midwife subject to discipline under section 12-255-120 (1)(i).

Source: L. 2020: Entire section added, (HB 20-1216), ch. 190, p. 867, § 6, effective July 1. **L. 2023:** (2) amended, (SB 23-167), ch. 261, p. 1531, § 21, effective May 25.

Cross references: For the legislative declaration in HB 20-1216, see section 1 of chapter 190, Session Laws of San Andreas 2020.

12-255-136. Change of name - direction to revisor - repeal. (Repealed)

Source: L. 2020: Entire section added, (HB 20-1216), ch. 190, p. 877, § 18, effective July 1.

Editor's note: Subsection (2) provided for the repeal of this section, effective September 1, 2023. (See L. 2020, p. 877.)

PART 2

NURSE AIDES

Editor's note: This part 2 was added with relocations in 2020. Former S.A.R.S. sections are shown in editor's notes following those sections that were relocated. For a detailed comparison of this part 2, see the comparative tables located in the back of the index.

12-255-201. Nurse aide certification program - department of public health and environment to assist - funding. (1) The department of public health and environment, which is otherwise responsible for the regulation of certain medical facilities, shall, as necessary, assist the board in implementing the provisions of this part 2.

(2) Funding for the nurse aide certification program, as operated by the department of regulatory agencies, shall be provided by the federal medicaid and medicare programs. Medicaid funding shall be secured by the department of health care policy and financing and medicare funding shall be secured by the department of public health and environment. All the funding shall be forwarded to the department of regulatory agencies for its use in operating the nurse aide certification program. The departments of health care policy and financing and public health and environment shall take all reasonable and necessary steps to secure the funding from the federal medicaid and medicare programs.

Source: L. 2020: Entire part added with relocations, (HB 20-1183), ch. 157, p. 685, § 29, effective July 1.

Editor's note: Subsection (1) is similar to former § 12-260-104 (2), and subsection (2) is similar to former § 12-260-104 (6), as they existed prior to 2020.

12-255-202. Application for certification - fee. (1) Every applicant for certification as a nurse aide, whether qualifying by competency evaluation or by endorsement, shall submit the application on forms provided by the board.

(2) (a) The applicant shall include with the application submitted pursuant to subsection (1) of this section an application fee established pursuant to section 12-20-105.

(b) The board may reduce the application fee if federal funds are available. The fee is not subject to the provisions of section 12-20-104.

Source: L. 2020: Entire part added with relocations, (HB 20-1183), ch. 157, p. 686, § 29, effective July 1.

Editor's note: This section is similar to former § 12-260-105 as it existed prior to 2020.

12-255-203. Application for certification by competency evaluation. (1) Every applicant for certification by competency evaluation shall pay the required application fee and shall submit written evidence that the applicant:

(a) Has not committed any act or omission that would be grounds for discipline or denial of certification under this article 255; and

(b) Has successfully completed an approved education program.

Source: L. 2020: Entire part added with relocations, (HB 20-1183), ch. 157, p. 686, § 29, effective July 1.

Editor's note: This section is similar to former § 12-260-106 as it existed prior to 2020.

12-255-204. Certification by endorsement. An applicant may obtain certification by endorsement if the applicant satisfies the requirements of the occupational credential portability program.

Source: L. 2020: Entire section amended, (HB 20-1326), ch. 126, p. 542, § 34, effective June 25; entire part added with relocations, (HB 20-1183), ch. 157, p. 686, § 29, effective July 1.

Editor's note: (1) This section is similar to former § 12-260-107 as it existed prior to 2020.

(2) Amendments to § 12-260-107 by HB 20-1326 were harmonized and relocated to this section as it was amended by HB 20-1183.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-255-205. Certification by competency evaluation. (1) All applicants except those certified by endorsement shall pass a clinical competency evaluation. The evaluation shall be in a written or oral form and shall include the following areas:

(a) Basic nursing skills;

(b) Personal care skills;

(c) Recognition of mental health and social services needs;

(d) Basic restorative services;

(e) Resident or patient rights.

(2) Competency evaluations shall be held at the times and places as the board determines but shall be held at least four times per year.

Source: L. 2020: Entire part added with relocations, (HB 20-1183), ch. 157, p. 687, § 29, effective July 1.

Editor's note: This section is similar to former § 12-260-108 as it existed prior to 2020.

12-255-206. Scope of practice - rules. (1) In addition to any nursing tasks delegated to a certified nurse aide pursuant to section 12-255-131, a certified nurse aide who is deemed

competent by a registered nurse licensed pursuant to part 1 of this article 255 may perform the following tasks:

(a) Digital stimulation, insertion of a suppository, or the use of an enema, or any other medically acceptable procedure to stimulate a bowel movement;

(b) Gastrostomy-tube and jejunostomy-tube feedings;

(c) Placement in a client's mouth of presorted medication that has been boxed or packaged by a registered nurse, a licensed practical nurse, or a pharmacist or, in the case of a client who is a minor, presorted medication that has been sorted by the minor's parent or guardian;

(d) Administration of oxygen to clients; and

(e) Changing ostomy bags.

(2) The board shall promulgate rules concerning the competency requirements for a certified nurse aide to perform the tasks listed in subsection (1) of this section.

(3) The duties performed by a certified nurse aide as specified in subsection (1) of this section are not considered a delegation of nursing tasks pursuant to section 12-255-131.

(4) A registered nurse who in good faith determines that a certified nurse aide is competent to perform the tasks listed in subsection (1) of this section is not liable for the actions of the certified nurse aide in the performance of the tasks.

Source: L. 2020: Entire part added with relocations, (HB 20-1183), ch. 157, p. 687, § 29, effective July 1.

Editor's note: This section is similar to former § 12-260-110 as it existed prior to 2020.

12-255-207. Advisory committee. To assist in the performance of its duties under this part 2, the board may designate an advisory committee, which shall report to the board. The committee consists of seven members who have expertise in an area under review. One member shall be a certified nurse aide; one member shall be a licensed professional nurse or a licensed practical nurse as defined in section 12-255-104 who supervises certified nurse aides; one member shall represent a home health agency; one member shall represent a nursing facility; one member shall be a department of public health and environment employee; and two members shall be members of the public. Committee members shall receive a per diem allowance pursuant to section 12-20-103 (6) for their services and shall be reimbursed for the actual and necessary expenses in the performance of their duties from the division of professions and occupations cash fund by the general assembly.

Source: L. 2020: Entire part added with relocations, (HB 20-1183), ch. 157, p. 688, § 29, effective July 1.

Editor's note: This section is similar to former § 12-260-112 as it existed prior to 2020.

12-255-208. Medication aides - training - scope of duties - rules. (1) Prior to a certified nurse aide obtaining authority as a medication aide to administer medications, the certified nurse aide shall meet all applicable requirements as established by rules of the board. The board shall promulgate rules regarding the scope of practice, education, experience, and

certification requirements for a nurse aide to obtain authority to administer medications. The board shall consider, but not be limited to, reducing the number of required hours of education, expanding the allowable routes of administration, reducing or eliminating the required hours of work experience, and developing different scopes of practice depending on practice setting, if appropriate.

(2) The board shall promulgate rules regarding the supervision requirements for a medication aide, the requirements for a registered nurse to perform a patient assessment before a medication aide administers medications to the patient, and requirements for a registered nurse to review medications to be administered by a medication aide.

(3) The administration of medications by medication aides does not alter any requirement or limitation applicable to the delegation of nursing tasks pursuant to section 12-255-131.

Source: L. 2020: Entire part added with relocations, (HB 20-1183), ch. 157, p. 688, § 29, effective July 1.

Editor's note: This section is similar to former § 12-260-113 as it existed prior to 2020.

12-255-209. Grounds for discipline. (1) The board may suspend, revoke, or deny any person's certification to practice as a nurse aide or authority to practice as a medication aide in accordance with section 12-20-404 (1)(d) or may issue to the person a letter of admonition under the circumstances specified in and in accordance with section 12-20-404 (4), upon proof that a person:

(a) Has procured or attempted to procure a certificate by fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact;

(b) Has been convicted of a felony or has had a court accept a plea of guilty or nolo contendere to a felony. A certified copy of the conviction or plea from a court of competent jurisdiction is prima facie evidence of the conviction or plea. In considering discipline based on the grounds specified in this subsection (1)(b), the board shall be governed by sections 12-20-202 (5) and 24-5-101.

(c) Has had a certification to practice as a nurse aide or to practice any other health-care occupation suspended or revoked in any jurisdiction. A certified copy of the order of suspension or revocation shall be prima facie evidence of the suspension or revocation.

(d) Has violated or has aided or knowingly permitted any person to violate any provision of this part 2 or an applicable provision of article 20 or 30 of this title 12;

(e) Has negligently or willfully violated any order or rule of the board pertaining to practice or certification as a nurse aide;

(f) Has verbally or physically abused a person under the care of the certified nurse aide;

(g) Excessively uses or abuses alcohol, any habit-forming drug, any controlled substance, as defined in section 18-18-102 (5), or other drugs having similar effects, or is diverting controlled substances, as defined in section 18-18-102 (5), or other drugs having similar effects from the person's place of employment;

(h) Has misused any drug or controlled substance, as defined in section 18-18-102 (5);

(i) Has a physical or mental disability that renders the person unable to practice as a certified nurse aide with reasonable skill and safety to the patients and that may endanger the health or safety of persons under the nurse aide's care;

(j) Has violated the confidentiality of information or knowledge as prescribed by law concerning any patient;

(k) Has misappropriated patient or facility property;

(l) Has engaged in any conduct that would constitute a crime as defined in title 18, if the conduct relates to the person's ability to practice as a nurse aide. In considering discipline based upon the grounds specified in this subsection (1)(l), the board shall be governed by the provisions of sections 12-20-202 (5) and 24-5-101.

(m) Has neglected a person under the care of the certified nurse aide;

(n) Has willfully or negligently acted in a manner inconsistent with the health or safety of persons under the nurse aide's care;

(o) Has willfully or negligently practiced as a medication aide in a manner that does not meet generally accepted standards for practice;

(p) Has willfully or negligently violated any order or rule of the board pertaining to the practice or authorization as a medication aide;

(q) Has practiced in a medical facility as a nurse aide except as provided in this part 2;

(r) Has practiced as a nurse aide during any period when his or her certificate has been suspended or revoked;

(s) Has sold or fraudulently obtained or furnished a certificate to practice as a nurse aide or has aided or abetted therein;

(t) Has failed to respond in a materially factual and timely manner to a complaint as grounds for discipline pursuant to section 12-255-212; or

(u) Has failed to report a criminal conviction to the board within forty-five days after the conviction.

(2) Except as otherwise provided in subsection (1) of this section, the board need not find that the actions that form the basis for the disciplinary action were willful. However, the board, in its discretion, may consider whether the action was willful in determining the sanctions it imposes on the nurse aide.

(3) An employer of a medication aide shall report conduct that constitutes grounds for discipline pursuant to this section to the board and any disciplinary action taken by the employer against a medication aide or the resignation of a medication aide in lieu of a disciplinary action resulting from the conduct.

Source: L. 2020: Entire part added with relocations, (HB 20-1183), ch. 157, p. 689, § 29, effective July 1; (1)(g) amended, (SB 20-007), ch. 286, p. 1411, § 34, effective July 13.

Editor's note: (1) This section is similar to former § 12-260-114 as it existed prior to 2020.

(2) Subsection (1)(g) was amended in HB 20-007, effective July 13, 2020. However, those amendments were superseded by the amendment of subsection (1)(g) by HB 20-1183, effective July 1, 2020.

12-255-210. Withholding or denial of certification. (1) If the board determines that an applicant for an initial certificate to practice as a nurse aide does not possess the qualifications specified in section 12-255-203 or 12-255-204, that section 12-255-209 (1)(l) is applicable, or that there is reasonable cause to believe that the applicant has committed any of the acts set forth in section 12-255-209 as grounds for discipline, the board may deny the applicant a certificate. When the board denies a certificate, it shall comply with the following procedures:

(a) The provisions of section 24-4-104 shall apply, and the board shall provide the applicant with a written statement that sets forth the basis for the board's determination.

(b) If the applicant requests a hearing pursuant to section 24-4-104 (9), the following applies:

(I) An applicant whose certification has been denied on the basis of a lack of qualifications has the burden of proof to show that the applicant possesses the qualifications required under this part 2.

(II) For an applicant whose certification has been denied on the basis of reasonable cause to believe that grounds for discipline exist, the board has the burden of proof to show the commission of acts constituting grounds for discipline under this part 2.

(c) If a hearing is conducted, the board shall affirm, modify, or reverse its prior determination and action in accordance with the findings resulting from the hearing.

(d) If an applicant who has requested a hearing pursuant to section 24-4-104 (9) fails to appear at the hearing, absent a determination by the board that there was good cause for the failure to appear, the board may affirm its prior action of withholding certification without conducting a hearing on the matter.

(e) If the board withholds certification without a hearing in accordance with this section, the board is immune from suit concerning the withholding unless it has acted unreasonably or has failed to act in good faith.

Source: L. 2020: Entire part added with relocations, (HB 20-1183), ch. 157, p. 690, § 29, effective July 1.

Editor's note: This section is similar to former § 12-260-115 as it existed prior to 2020.

12-255-211. Mental and physical competency of nurse aides. (1) If a certified nurse aide is determined by a court of competent jurisdiction to have a mental health disorder, the board shall automatically suspend the certified nurse aide's certification, and the suspension must continue until the certified nurse aide is determined by the court to be restored to competency; duly discharged as restored to competency; or otherwise determined to be competent in any other manner provided by law.

(2) (a) If the board has reasonable cause to believe that a certified nurse aide's physical or mental health has resulted in the nurse aide being unable to practice with reasonable skill or that the practice of the nurse aide is a threat to the safety of the nurse aide's patients, the board may require the nurse aide to submit to a mental or physical examination by a physician or other licensed health-care provider designated by the board.

(b) If a nurse aide fails to submit to a mental or physical examination, the board may suspend the nurse aide's certification until the required examination or examinations are conducted.

(3) Every person who applies to the board for certification as a nurse aide is deemed by virtue of the application to have consented to undergo a physical or mental examination at any time if the board so requests. Any request by the board to a nurse aide to submit to the examination shall be in writing and shall contain the basis upon which the board determined that reasonable cause to believe the condition specified in subsection (2)(a) of this section exists.

(4) A certified nurse aide who has been requested to submit to a physical or mental examination may provide the board with information concerning the nurse aide's physical or mental health from a physician of the nurse aide's own choice. The board may consider the information in conjunction with, but not in lieu of, testimony and information provided by the physician designated by the board to examine the nurse aide.

(5) The results of any mental or physical examination requested by the board pursuant to this section shall not be used as evidence in any proceeding except a proceeding conducted pursuant to this part 2. The results of the examination shall not be deemed to be public records and shall not be made available to the public.

Source: L. 2020: Entire part added with relocations, (HB 20-1183), ch. 157, p. 691, § 29, effective July 1.

Editor's note: This section is similar to former § 12-260-116 as it existed prior to 2020.

12-255-212. Disciplinary proceedings - hearing officers. (1) The board may employ hearing officers as authorized in section 12-20-403 (3).

(2) A proceeding for discipline of a certified nurse aide may be commenced when the board has reasonable grounds to believe that a nurse aide certified by the board has committed acts that may violate the provisions of this part 2.

(3) The license of a person certified by the board as a nurse aide may be revoked or the person may otherwise be disciplined pursuant to section 12-20-404 upon written findings by the board that the licensee has committed acts that violate the provisions of this part 2.

(4) No later than thirty days after the date of the board's action, the board shall send a notice to a certified nurse aide disciplined under subsection (3) of this section, to the most recent address the certified nurse aide provided to the board, notifying the certified nurse aide of the action taken, the specific charges giving rise to the action, and the certified nurse aide's right to request a hearing on the action taken.

(5) Within thirty days after the board sends the notification, the certified nurse aide may file a written request with the board for a hearing on the action taken. Upon receipt of the request, the board shall grant a hearing to the certified nurse aide. If the certified nurse aide fails to file a written request for a hearing within thirty days, the action of the board shall be final on that date.

(6) Disciplinary proceedings shall be conducted in the manner prescribed by article 4 of title 24 and section 12-20-403.

(7) Failure of the certified nurse aide to appear at the hearing without good cause shall be deemed a withdrawal of the certified nurse aide's request for a hearing, and the board's action shall be final on that date. Failure, without good cause, of the board to appear at the hearing shall be deemed cause to dismiss the proceeding.

(8) (a) No previously issued certificate to engage in practice as a nurse aide shall be revoked or suspended except under the procedure set forth in this section, except in emergency situations as provided by section 24-4-104.

(b) The denial of an application to renew an existing certificate shall be treated in all respects as a revocation.

(9) A person providing documents subpoenaed pursuant to section 12-20-403 (2) shall prepare them from the original record and shall delete from the copy provided pursuant to the subpoena the name of the patient, but the patient shall be identified by a numbered code to be retained by the custodian of the records from which the copies were made. Upon certification of the custodian that the copies are true and complete except for the patient's name, the copies shall be deemed authentic, subject to the right to inspect the originals for the limited purpose of ascertaining the accuracy of the copies. A privilege of confidentiality does not exist with respect to the copies, and liability does not lie against the board or the custodian or the custodian's authorized employee for furnishing or using the copies in accordance with this subsection (9).

(10) The board may issue and send a confidential letter of concern to a certificate holder under the circumstances specified in section 12-20-404 (5).

(11) An employer of a nurse aide shall report to the board any disciplinary action taken against the nurse aide or any resignation in lieu of a disciplinary action for conduct that constitutes a violation of this part 2.

(12) Except when a decision to proceed with a disciplinary action has been agreed upon by a majority of the board or its designee and notice of formal complaint is drafted and served on the licensee by first-class mail, any investigations, examinations, hearings, meetings, or any other proceedings of the board related to discipline that are conducted pursuant to this section are exempt from the open records provisions of article 72 of title 24 requiring that the proceedings of the board be conducted publicly or that the minutes or records of the board with respect to action of the board taken pursuant to this section be open to public inspection.

(13) The board may issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405.

Source: L. 2020: Entire part added with relocations, (HB 20-1183), ch. 157, p. 692, § 29, effective July 1.

Editor's note: This section is similar to former § 12-260-117 as it existed prior to 2020.

12-255-213. Surrender of certificate. (1) Prior to the initiation of an investigation or hearing, any certified nurse aide may surrender the aide's certificate to practice as a nurse aide to the board.

(2) Following the initiation of an investigation or hearing and upon a finding that to conduct the investigation or hearing would not be in the public interest, the board may allow a certified nurse aide to surrender the aide's certificate to practice.

(3) The surrender of a certificate in accordance with this section removes all rights and privileges to practice as a nurse aide, including the right to apply for renewal of a certificate.

Source: L. 2020: Entire part added with relocations, (HB 20-1183), ch. 157, p. 693, § 29, effective July 1.

Editor's note: Subsection (1) is similar to former § 12-260-118 (1); subsection (2) is similar to former § 12-260-118 (2); and subsection (3) is similar to former § 12-260-118 (4), as they existed prior to 2020.

12-255-214. Exclusions. (1) This part 2 does not affect or apply to:

(a) The gratuitous care of friends or family members;

(b) A person for hire who does not represent himself or herself as or hold himself or herself out to the public as a certified nurse aide. However, a person for hire who is not a nurse aide certified under this part 2 shall not perform the duties of or hold himself or herself out as being able to perform the full duties of a certified nurse aide.

(c) Nursing assistance in the case of an emergency;

(d) A person who is directly employed by a medical facility while acting within the scope and course of employment for the first four consecutive months of the person's employment at the medical facility if the employment is part of an approved training program prior to certification and the certification is not by endorsement pursuant to section 12-255-204. A person may utilize this exclusion only once in any twelve-month period. This exclusion does not apply to any person who has allowed the person's certification to lapse, had the person's certification as a nurse aide suspended or revoked, or had an application for certification denied.

(e) Any person licensed, certified, or registered by the state of San Andreas who is acting within the scope of the license, certificate, or registration;

(f) Any person performing services pursuant to sections 12-255-131, 25.5-10-204 (2)(j), 27-10.5-103 (2)(i), and part 3 of article 1.5 of title 25.

Source: L. 2020: Entire part added with relocations, (HB 20-1183), ch. 157, p. 693, § 29, effective July 1.

Editor's note: This section is similar to former § 12-260-120 as it existed prior to 2020.

12-255-215. Unauthorized practice - penalties. Any person who practices or offers or attempts nursing aide practice or medication administration without an active certificate of authority issued under this part 2; practices in a medical facility as a nurse aide except as provided in this part 2; uses any designation in connection with the person's name that tends to imply that the person is a certified nurse aide unless the person is so certified under this part 2; practices as a nurse aide during any period when the person's certificate has been suspended or revoked; or sells or fraudulently obtains or furnishes a certificate to practice as a nurse aide or aids or abets therein commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501.

Source: L. 2020: Entire part added with relocations, (HB 20-1183), ch. 157, p. 694, § 29, effective July 1. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3157, § 151, effective March 1, 2022.

Editor's note: This section is similar to former § 12-260-121 as it existed prior to 2020.

ARTICLE 260

Nurse Aides

12-260-101 to 12-260-123. (Repealed)

Source: L. 2020: Entire article repealed, (HB 20-1183), ch. 157, p. 694, § 30, effective June 29.

Editor's note: This article 260 was numbered as article 38.1 of this title 12 prior to the repeal and reenactment of this title 12 in 2019 and was not amended prior to its repeal in 2020. This article 260 was relocated to part 2 of article 255 of this title 12 in 2020. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 260, see the comparative tables located in the back of the index.

ARTICLE 265

Nursing Home Administrators

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 265 was numbered as article 39 of this title 12 prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

12-265-101. Legislative declaration. The general assembly declares that the intent of this article 265 is to provide a measure of protection to the residents of nursing homes in this state who are aged or who have disabilities by establishing a means to regulate nursing home administrators to ensure quality administration and sound management of nursing homes. It is also the intent of the general assembly that the board of examiners of nursing home administrators be adequately funded to carry out the duties and functions specified by this article 265 as well as the legislative intent expressed in this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1376, § 1, effective October 1.

Editor's note: This section is similar to former § 12-39-101 as it existed prior to 2019.

12-265-102. Applicability of common provisions. Articles 1, 20, and 30 of this title 12 apply, according to their terms, to this article 265.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1377, § 1, effective October 1.

12-265-103. Definitions. As used in this article 265, unless the context otherwise requires:

(1) "Board" means the board of examiners of nursing home administrators created in section 12-265-106.

(2) "Nursing home administrator" means any individual licensed and responsible for planning, organizing, directing, and controlling the operation of a nursing home or who in fact performs these functions, whether or not these functions are shared by one or more other persons.

(3) "Nursing home administrator-in-training" means an individual registered with the board pursuant to the provisions of this article 265.

(4) "Nursing home facility" shall have the same meaning as that set forth in section 25-1-1002 and shall include nursing care facilities, whether proprietary or nonprofit, that are licensed under section 25-1.5-103 (1)(a)(I) or pursuant to the rules for nursing homes promulgated by the department of public health and environment. The term "nursing home" includes but is not limited to nursing homes owned or administered by the state government or any agency or political subdivision thereof.

(5) "Practice of nursing home administration" means the planning, organizing, directing, and control of the operation of a nursing home.

(6) "Reasonable grounds" means facts and circumstances sufficiently strong to warrant a prudent person to believe that the facts and circumstances are true.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1377, § 1, effective October 1.

Editor's note: This section is similar to former § 12-39-102 as it existed prior to 2019.

12-265-104. Administrator license required. No person shall practice or offer to practice nursing home administration in this state or use any title, sign, card, or device to indicate that the person is a nursing home administrator, unless the person has been duly licensed as a nursing home administrator as required by this article 265.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1377, § 1, effective October 1.

Editor's note: This section is similar to former § 12-39-103 as it existed prior to 2019.

12-265-105. State training school. The nursing home administrator in each of the three state home and training schools at Grand Junction, Pueblo, and Wheat Ridge is not required to be the superintendent of the facility.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1377, § 1, effective October 1.

Editor's note: This section is similar to former § 12-39-103.5 as it existed prior to 2019.

12-265-106. Board of examiners of nursing home administrators - creation - subject to termination. (1) (a) The board of examiners of nursing home administrators is hereby created in the division. The board is composed of the following members appointed by the governor:

(I) Three members who are practicing nursing home administrators duly licensed under this article 265, at least one of whom shall be from nonprofit facility administration; and

(II) Two members representative of the public at large.

(b) No more than three of the members of the board shall be officials or full-time employees of state government or local governments. The term of office for each member of the board shall be four years. No member of the board shall serve more than two consecutive terms. All the members of the board shall be residents of this state.

(2) (a) A nursing home administrator is qualified to be appointed to the board if the person:

(I) Is a legal resident of San Andreas;

(II) Is currently licensed as a nursing home administrator; and

(III) Has been actively engaged as a licensed nursing home administrator for at least three years.

(b) Notwithstanding subsection (2)(a) of this section, a person convicted of a felony in San Andreas or any other state or of violating this article 265 or any law governing the practice of nursing home administration shall not be appointed to or serve on the board.

(3) (a) The governor shall make appointments to the board. In making an appointment to fill a vacancy on the board in the position of, or to fill the remainder of an unexpired term for, a nursing home administrator who is from nonprofit facility administration, as required by subsection (1)(a)(I) of this section, if the governor, after a good-faith attempt, is unable to find a nursing home administrator candidate who comes from nonprofit facility administration to fill the vacancy or complete the unexpired term, the governor may appoint any qualified nursing home administrator to complete the unexpired term or fill the vacancy in that board position. If the appointment is to fill a vacancy, the board member may serve the full term and is eligible for appointment for a second term.

(b) The governor may remove any board member for negligence, incompetency, unprofessional conduct, or willful misconduct. Actions constituting neglect of duty include but are not limited to three unexcused absences from scheduled meetings in any one calendar year. The governor shall fill a vacancy in the membership of the board for the remainder of the unexpired term. A member who is a practicing nursing home administrator or long-term care professional shall serve for a full term only if, during the term, the member is actively employed as a practicing member of his or her profession without a lapse of employment greater than one hundred twenty days.

(4) The board shall elect annually from its membership a chair and vice-chair. The board shall hold two or more meetings each year. At any meeting a majority shall constitute a quorum.

(5) The board is a **type 1** entity, as defined in section 24-1-105, and exercises its powers and performs its duties and functions specified by this article 265 under the department, the executive director, and the division.

(6) The director of the division may appoint, subject to section 13 of article XII of the state constitution, a program director for the board. The program director shall not be a member of the board, but shall have the powers and shall perform the duties prescribed by law and the

rules of the board. Additional staff may be appointed by the director of the division to adequately assist the board and the program director in keeping records and in the performance of their duties. These employees, if any, shall be appointed and serve in accordance with section 13 of article XII of the state constitution.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1377, § 1, effective October 1. **L. 2022:** (5) amended, (SB 22-162), ch. 469, p. 3396, § 132, effective August 10.

Editor's note: Subsection (1) is similar to former § 12-39-104 (1); subsection (2) is similar to former § 12-39-104.5; subsection (3) is similar to former § 12-39-104 (2); subsection (4) is similar to former § 12-39-104 (3); subsection (5) is similar to former § 12-39-104 (4); and subsection (6) is similar to former § 12-39-104 (5), as those sections existed prior to 2019.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of San Andreas 2022.

12-265-107. Powers and duties of the board - rules. (1) The board has the following powers and duties:

(a) To adopt rules defining standards of nursing home administration, including the responsibilities and duties of nursing home administrators, consistent with this article 265. The standards established in the rules shall be met by individuals in order to receive and retain a license and shall be designed to ensure that nursing home administrators are qualified by education and training in the appropriate field to serve as nursing home administrators.

(b) To develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets the standards adopted under subsection (1)(a) of this section;

(c) To issue licenses to individuals determined, after application of the techniques, to meet the standards specified in subsection (1)(a) of this section;

(d) To take disciplinary action against a licensee in accordance with section 12-20-404 or place a temporary license holder on probation in any case where the individual holding any such license is determined to have failed to conform to the standards developed pursuant to subsection (1)(a) of this section or to have committed an act that constitutes grounds for discipline as set forth in section 12-265-113;

(e) To establish and carry out procedures designed to ensure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of the standards specified in subsection (1)(a) of this section;

(f) (I) To conduct investigations, hold hearings, and take evidence in accordance with section 12-20-403.

(II) A person providing documents subpoenaed pursuant to section 12-20-403 (2) shall prepare them from the original record and shall delete from the copy provided pursuant to the subpoena the name of the resident, but shall identify the resident by a numbered code, to be retained by the custodian of the records from which the copies were made. Upon certification of the custodian that the copies are true and complete except for the resident's name, they shall be

deemed authentic, subject to the right to inspect the originals for the limited purpose of ascertaining the accuracy of the copies. No privilege of confidentiality shall exist with respect to the copies, and no liability shall lie against the board, the custodian, or the custodian's authorized employee for furnishing or using the copies in accordance with this subsection (1).

(2) (a) The board shall develop rules, with input from long-term care facility provider associations, the department of public health and environment, the office of the state attorney general, and consumer representatives, concerning factors to be considered in determining performance that fails to meet generally accepted standards for nursing home administrators and whether or not remedial or disciplinary actions are warranted. The board may create an advisory committee to assist the board in developing standards that describe the responsibilities and duties of nursing home administrators.

(b) If, after an investigation, the board determines that there are reasonable grounds to believe that the performance of a licensed administrator is inconsistent with the health or safety of residents in the care of the facility in which the administrator works and is contrary to standards adopted by the board, the board may initiate disciplinary action as may be warranted.

(3) The board shall have the authority to make rules pursuant to section 12-20-204 and to take such other actions as may be necessary to enable the state to meet the requirements set forth in section 1908 of the federal "Social Security Act", the federal regulations promulgated thereunder, and other pertinent federal requirements.

(4) The board shall promulgate rules defining the criteria for the education and experience necessary for admittance to the administrator-in-training program. The board shall furnish copies of the appropriate rules to members of the public upon request. The criteria for the education and experience necessary for admittance to the administrator-in-training program shall not exceed successful completion of two years of college level study in an accredited institution of higher education in areas relating to health care or two years of board-approved experience in nursing home administration or comparable health management experience for each year of required education.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1379, § 1, effective October 1.

Editor's note: Subsection (1) is similar to former § 12-39-105 (1); subsection (2) is similar to former § 12-39-105 (3); subsection (3) is similar to former § 12-39-105 (4); and subsection (4) is similar to former § 12-39-107.5, as those sections existed prior to 2019.

12-265-108. Qualifications for admission to examination. (1) The board shall admit to examination for licensure as a nursing home administrator any applicant who pays a fee as determined by the board, submits evidence of suitability prescribed by the board, is twenty-one years of age or older, and provides written documentation that the applicant meets one of the following requirements:

(a) The applicant has successfully completed the administrator-in-training program pursuant to section 12-265-109; or

(b) The applicant has successfully completed a bachelor's degree or higher degree in public health administration or health administration, a master's degree in management or business administration, or any degree or degrees deemed appropriate by the board; or

(c) (I) The applicant has successfully completed an associate's degree or higher degree in a health-care-related field or a bachelor's degree in business or public administration and has a minimum of one year of experience in administration in a nursing home or hospital. For the purposes of this section, a registered nurse who is a graduate of a three-year diploma program meets the associate degree requirement.

(II) For purposes of the experience required by this subsection (1)(c), an applicant must have day-to-day, on-site responsibility for supervising, directing, managing, monitoring, or exercising reasonable control over subordinates for one year.

(2) If the applicant fails to provide evidence satisfactory to the board that the applicant meets the requirements of subsection (1) of this section, the applicant shall not be admitted to take the licensing examination, and the applicant shall not be entitled to or be granted a license as a nursing home administrator.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1381, § 1, effective October 1.

Editor's note: This section is similar to former § 12-39-106 as it existed prior to 2019.

12-265-109. Administrator-in-training - rules. (1) The board may grant admission into the nursing home administrator-in-training program to an applicant for a nursing home administrator's license who meets the board's criteria for education and experience, pursuant to section 12-265-107 (4). Upon successful completion of the one-thousand-hour training period, the applicant is eligible to take the examination.

(2) Every nursing home administrator-in-training shall register the fact of the training with the board in accordance with the rules and on forms provided by the board.

(3) The board shall, by rule, establish a monitoring mechanism that will provide oversight of the administrator-in-training program, including a requirement that an administrator-in-training submit periodic progress reports to the board.

(4) The board may waive any portion required by subsection (1) of this section if it finds that the applicant has prior experience or training sufficient to satisfy requirements established by rule of the board.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1382, § 1, effective October 1.

Editor's note: This section is similar to former § 12-39-107 as it existed prior to 2019.

12-265-110. Licenses - temporary licenses - renewal - fees - rules. (1) Any license issued by the board pursuant to this article 265 is subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2). Any person whose license has expired shall be subject to the penalties provided in this article 265 or section 12-20-202 (1).

(2) Only an individual who has qualified as a licensed nursing home administrator under the provisions of this article 265 and who holds a valid current license pursuant to the provisions

of this section has the privilege of using the title "nursing home administrator" and the right and the privilege of using the abbreviation "N.H.A." after the person's name.

(3) The board shall maintain a list of all licensed nursing home administrators, which list shall show: The place of residence, the name and age of each licensee, any action taken by the board, the number of the license issued to the licensee, and such other pertinent information as the board may deem necessary. The department of regulatory agencies shall keep a list of applicants who are denied.

(4) The board may issue a temporary license to an applicant for a period not to exceed six months. The board shall promulgate rules for the issuance of a temporary license.

(5) A temporary license shall be granted to an applicant who is employed as a hospital administrator by a general hospital licensed or certified by the department of public health and environment. The temporary license shall be granted for a period not to exceed twelve months and shall be void at such time as the license holder is no longer employed by the general hospital.

(6) The board shall establish, pursuant to section 12-20-105, and publish annually a schedule of fees for the licensing of nursing home administrators.

(7) Each licensee shall, within thirty days, notify the board of any conviction of a felony or the acceptance of a guilty plea or a plea of nolo contendere to a felony.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1382, § 1, effective October 1.

Editor's note: This section is similar to former § 12-39-108 as it existed prior to 2019.

12-265-111. Examinations. (1) The board shall determine the subjects of the state examination for all applicants for licensure as nursing home administrators.

(2) Examinations shall be held at least semiannually at such times and places as the board shall designate. Any examination shall be prepared or approved by the board.

(3) The board shall have the authority to select and administer a national examination.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1383, § 1, effective October 1.

Editor's note: This section is similar to former § 12-39-109 as it existed prior to 2019.

12-265-112. Licensure by endorsement. The board shall issue a license by endorsement to an applicant who satisfies the requirements of the occupational credential portability program.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1384, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1326), ch. 126, p. 542, § 35, effective June 25.

Editor's note: This section is similar to former § 12-39-110 as it existed prior to 2019.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-265-113. Grounds for discipline. (1) The board has the power to take disciplinary or other action as specified in sections 12-20-404 and 12-265-107 (1)(d) upon proof that the person:

(a) Has procured or attempted to procure a license by fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact;

(b) Has been convicted of a felony or pled guilty or nolo contendere to a felony. A certified copy of the judgment of conviction by a court of competent jurisdiction shall be prima facie evidence of the conviction. In considering a possible revocation, suspension, or nonrenewal of a license or temporary license, the board shall be governed by the provisions of sections 12-20-202 (5) and 24-5-101.

(c) Has had a license to practice nursing home administration or any other health-care occupation suspended or revoked in any jurisdiction. A certified copy of the order of suspension or revocation shall be prima facie evidence of the suspension or revocation.

(d) Has violated or aided or abetted a violation of any provision of this article 265, an applicable provision of article 20 or 30 of this title 12, any rule adopted under this article 265, or any lawful order of the board;

(e) Has committed or engaged in any act or omission that fails to meet generally accepted standards for nursing home administration practice or licensure;

(f) Has falsified or made incorrect entries or failed to make essential entries on resident records;

(g) Has a substance use disorder, as defined in section 27-81-102, abuses or engages in the habitual or excessive use of any such habit-forming drug or any controlled substance as defined in section 18-18-102 (5), or participates in the unlawful use of controlled substances as specified in section 18-18-404; except that the board has the discretion not to discipline the licensee if the person is participating, in good faith, in a substance use disorder treatment program approved by the board;

(h) Has a physical disability or an intellectual and developmental disability that renders the licensee unable to practice nursing home administration with reasonable skill and safety to the residents and that may endanger the health or safety of persons under the licensee's care;

(i) Has violated the confidentiality of information or knowledge as prescribed by law concerning any resident;

(j) Has violated section 18-13-119 concerning the abuse of health insurance;

(k) Has failed to post in the nursing home facility in a conspicuous place and in clearly legible type a notice giving the address and telephone number of the board and stating that complaints may be made to the board;

(l) Has practiced as a nursing home administrator without a license;

(m) Has used in connection with the person's name any designations tending to imply that the person is a licensed nursing home administrator, unless the person in fact holds a valid license;

(n) Has practiced as a nursing home administrator during a period when the person's license has been suspended or revoked;

(o) Has sold, fraudulently obtained, or furnished a license to practice as a nursing home administrator, or has aided or abetted therein; or

(p) Has failed to respond in an honest, materially responsive, and timely manner to a complaint filed against the person.

(2) The board need not find that the actions that are grounds for discipline were willful or negligent, but it may consider the same in determining the nature of disciplinary sanctions to be imposed.

(3) The board may send a letter of admonition to a licensee under the circumstances specified in and in accordance with section 12-20-404 (4).

(4) If the board finds the charges proven and orders that discipline be imposed, it may also require the licensee to participate in a treatment program or course of training or education as a requirement for reinstatement as may be needed to correct any deficiency found in the hearing.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1385, § 1, effective October 1. **L. 2020:** (1)(g) amended, (SB 20-007), ch. 286, p. 1412, § 35, effective July 13. **L. 2023:** (1)(n), (1)(o), and (3) amended and (1)(p) added, (SB 23-155), ch. 327, p. 1961, § 3, effective June 2.

Editor's note: This section is similar to former § 12-39-111 as it existed prior to 2019.

12-265-114. Withholding or denial of license - hearing. The board has the authority, pursuant to article 4 of title 24, to determine whether an applicant for a license or a temporary license to practice as a nursing home administrator possesses the qualifications required by this article 265, or whether there are reasonable grounds to believe that the applicant has done any of the acts set forth in section 12-265-113 as grounds for discipline. As used in this section, "applicant" does not include a person seeking the renewal of a license.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1386, § 1, effective October 1.

Editor's note: This section is similar to former § 12-39-112 as it existed prior to 2019.

12-265-115. Mental and physical examination of licensees. (1) (a) If the board has reasonable grounds to believe that a licensee or temporary license holder is unable to practice with reasonable skill and safety to residents because of a condition described in section 12-265-113 (1)(g) or (1)(h), it may require the person to submit to a mental or physical examination by a physician or other licensed health-care professional it designates. Upon the failure of the person to submit to the mental or physical examination, unless due to circumstances beyond the person's control, the board may suspend the person's license until the person submits to the required examinations.

(b) Every licensee or temporary license holder, by engaging in the practice of nursing home administration in this state or by applying for the renewal of a license or temporary license, shall be deemed to have given consent to submit to a mental or physical examination when so directed in writing by the board. The direction to submit to an examination shall contain

the basis of the board's reasonable grounds to believe that the licensee is unable to practice with reasonable skill and safety to residents because of a condition described in section 12-265-113 (1)(g) or (1)(h). The licensee shall be deemed to have waived all objections to the admissibility of the examining physician's or other licensed health-care professional's testimony or examination reports on the ground of privileged communication.

(2) Nothing in this section shall prevent the licensee from submitting testimony or examination reports of a physician or other licensed health-care professional designated by the licensee that pertains to a condition described in section 12-265-113 (1)(g) or (1)(h) that may be considered by the board in conjunction with, but not in lieu of, testimony and examination reports of the physician or other licensed health-care professional designated by the board.

(3) The results of any mental or physical examination ordered by the board shall not be used as evidence in any proceeding other than one before the board and shall not be deemed public records nor made available to the public.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1387, § 1, effective October 1.

Editor's note: This section is similar to former § 12-39-113 as it existed prior to 2019.

12-265-116. Disciplinary proceedings - administrative law judge - judicial review - publicly recorded votes. (1) Disciplinary proceedings may be commenced when the board has reasonable grounds to believe that a licensee under the board's jurisdiction has committed acts in violation of section 12-265-113.

(2) Disciplinary proceedings shall be conducted in the manner prescribed by section 12-20-403 and article 4 of title 24, and the hearing and opportunity for review shall be conducted pursuant to those laws by the board or an administrative law judge, at the board's discretion.

(3) No previously issued license to engage in the practice of nursing home administration shall be revoked or suspended until a hearing has been conducted pursuant to section 24-4-105 or, for emergency situations, pursuant to section 24-4-104 (4). The denial of an application to renew an existing license shall be treated in all respects as a revocation.

(4) (a) Complaints, investigations, hearings, meetings, or any other proceedings of the board conducted pursuant to the provisions of this article 265 and relating to disciplinary proceedings are exempt from the provision of any law requiring that proceedings of the board be conducted publicly or that the minutes or records of the board with respect to action of the board taken pursuant to the provisions of this article 265 be open to public inspection; except that this exemption applies only when the board, or an administrative law judge acting on behalf of the board, specifically determines that it is in the best interest of a complainant or other recipient of services to keep the proceedings or documents relating thereto closed to the public, or if the licensee is violating section 12-265-113 (1)(g), participating in good faith in a substance use disorder treatment program approved by the board or designed by the board to end any addiction or dependency specified in that section, and the licensee has not violated any provisions of the board order regarding participation in such a treatment program. If the board determines that it is in the best interest of a complainant or other recipient of services to keep the proceedings or documents relating thereto closed to the public, then the final action of the board is open to the public without disclosing the name of the client or other recipient.

(b) Section 12-20-408 governs judicial review of final board actions and orders appropriate for judicial review.

(5) The board may send a confidential letter of concern to a licensee under the circumstances specified in section 12-20-404 (5).

(6) All votes to impose discipline or dismiss a complaint must be recorded in the board's publicly available minutes and indicate how each board member voted on the question.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1387, § 1, effective October 1.

Editor's note: This section is similar to former § 12-39-114 as it existed prior to 2019.

12-265-117. Temporary advisory committees - immunity. (1) The board may appoint temporary advisory committees, including temporary professional review committees, to assist in the performance of its duties with respect to individual investigations. Each temporary advisory committee shall consist of at least three licensees who have expertise in the area under review. Members of temporary advisory committees shall receive no compensation for their services but shall be reimbursed for the actual and necessary expenses incurred in the performance of their duties.

(2) If a professional review committee is established pursuant to subsection (1) of this section to investigate the quality of care being given by a person licensed pursuant to this article 265, the committee shall include in its membership at least three persons licensed in the same category as the licensee under review, but the committee may be authorized to act only by the board.

(3) In addition to the persons specified in section 12-20-402, any member of a professional review committee, any member of the committee's staff, any person acting as a witness or consultant to the committee, any witness testifying in a proceeding authorized under this article 265, and any person who lodges a complaint pursuant to this article 265 is granted the same immunity, and is subject to the same conditions for immunity, as specified in section 12-20-402.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1389, § 1, effective October 1.

Editor's note: This section is similar to former § 12-39-115 as it existed prior to 2019.

12-265-118. Unauthorized practice - penalties. Any person who practices or offers or attempts to practice as a nursing home administrator without an active license issued under this article 265 is subject to penalties pursuant to section 12-20-407 (1)(a).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1389, § 1, effective October 1.

Editor's note: This section is similar to former § 12-39-116 as it existed prior to 2019.

12-265-119. Cease-and-desist orders. The board may issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1389, § 1, effective October 1.

Editor's note: This section is similar to former § 12-39-117 as it existed prior to 2019.

12-265-120. Injunctive proceedings. The board may seek injunctive relief through the attorney general or the district attorney in accordance with section 12-20-406, but only to enjoin any person who does not possess a currently valid or active nursing home administrator's license from committing any act declared to be unlawful or prohibited by this article 265. In any action taken pursuant to this section, the court shall not require the board to post a bond.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1391, § 1, effective October 1.

Editor's note: This section is similar to former § 12-39-118 as it existed prior to 2019.

12-265-121. Administration of nursing homes relying on treatment by spiritual means. A person who serves as an administrator of a nursing home conducted exclusively for persons who rely upon treatment by spiritual means alone, through prayer in accordance with the creed or tenets of a church or religious denomination, shall be exempt from the provisions of this article 265.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1391, § 1, effective October 1.

Editor's note: This section is similar to former § 12-39-119 as it existed prior to 2019.

12-265-122. Records. The board shall keep formal records of all complaints it receives and of the final disposition of the complaints. The board shall be responsible for implementing a tracking system to facilitate the retrieval of the records.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1391, § 1, effective October 1.

Editor's note: This section is similar to former § 12-39-120 as it existed prior to 2019.

12-265-123. Repeal of article - review of functions. This article 265 is repealed, effective September 1, 2028. Before the repeal, the licensing functions of the board are scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1391, § 1, effective October 1. **L. 2023:** Entire section amended, (SB 23-155), ch. 327, p. 1960, § 2, effective June 2.

Editor's note: This section is similar to former § 12-39-121 as it existed prior to 2019.

ARTICLE 270

Occupational Therapists and
Occupational Therapy Assistants

Editor's note: This article 270 was numbered as article 40.5 of this title 12 prior to the repeal and reenactment of this title 12 in 2019. This article 270 was repealed in 2020 and was subsequently recreated and reenacted in 2021, resulting in the addition, relocation, or elimination of sections as well as subject matter. For amendments to this article 270 prior to 2020, consult the 2019 San Andreas Revised Statutes and the San Andreas statutory research explanatory note beginning on page vii in the front of this volume. Former S.A.R.S. section numbers prior to 2020 are shown in editor's notes following those sections that were relocated.

12-270-101. Short title. The short title of this article 270 is the "Occupational Therapy Practice Act".

Source: L. 2021: Entire article RC&RE, (SB 21-003), ch. 4, p. 12, § 1, effective January 21.

Editor's note: This section is similar to former § 12-270-101 as it existed prior to 2020.

12-270-102. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) Occupational therapy services are provided for the purpose of promoting health and wellness to those who have or are at risk for developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation, or participation restriction;

(b) Occupational therapy addresses the physical, cognitive, psychosocial, sensory, and other aspects of performance in a variety of contexts to support engagement in everyday life activities that affect health, well-being, and quality of life;

(c) Occupational therapy practice consists of client management, which includes occupational therapy diagnosis and prognosis to optimize occupational performance;

(d) Occupational therapy includes contributions to public health services that are intended to improve the health of the public;

(e) The professional scope of occupational therapy practice evolves in response to innovation, research, collaboration, and change in societal needs; and

(f) This article 270 is necessary to:

(I) Safeguard the public health, safety, and welfare; and

(II) Protect the public from incompetent, unethical, or unauthorized persons.

(2) The general assembly further determines that it is the purpose of this article 270 to regulate persons who are representing themselves as occupational therapists and occupational therapy assistants and who are performing services that constitute occupational therapy.

Source: L. 2021: Entire article RC&RE, (SB 21-003), ch. 4, p. 12, § 1, effective January 21.

Editor's note: This section is similar to former § 12-270-102 as it existed prior to 2020.

12-270-103. Applicability of common provisions. Articles 1, 20, and 30 of this title 12 apply, according to their terms, to this article 270.

Source: L. 2021: Entire article RC&RE, (SB 21-003), ch. 4, p. 13, § 1, effective January 21.

Editor's note: This section is similar to former § 12-270-103 as it existed prior to 2020.

12-270-104. Definitions - rules. As used in this article 270, unless the context otherwise requires:

(1) "Activities of daily living" means activities that are oriented toward taking care of one's own body, such as bathing, showering, bowel and bladder management, dressing, eating, feeding, functional mobility, personal device care, personal hygiene and grooming, sexual activity, sleep, rest, and toilet hygiene.

(2) "Aide" means a person who is not licensed by the director and who provides supportive services to occupational therapists and occupational therapy assistants.

(3) "Behavioral health-care services" means services to facilitate the prevention, diagnosis, and treatment of, and for the recovery from, mental health and substance use disorders within the scope of practice of occupational therapy.

(4) "Client" means an individual, group, population, community, or organization that receives occupational therapy services.

(5) "Functional cognition" means the way in which an individual utilizes and integrates the individual's thinking and processing skills to accomplish everyday activities.

(6) "Instrumental activities of daily living" means activities that are oriented toward interacting with the environment and that may be complex. "Instrumental activities of daily living" includes care of others, care of pets, child-rearing, communication device use, community mobility, financial management, health management and maintenance, home establishment and management, meal preparation and cleanup, religious and spiritual expression, safety procedures and emergency responses, and shopping.

(7) "Low-vision rehabilitation services" means the evaluation, diagnosis, management, and care of the low-vision client in visual acuity, visual field, and oculomotor performance as it affects the client's occupational performance, including low-vision rehabilitation therapy, education, and interdisciplinary consultation.

(8) "Occupation" means an everyday, personalized activity in which people participate as individuals, families, and communities to occupy time, earn income, and bring meaning and

purpose to life. "Occupation" includes an activity that a person needs to do, wants to do, or is expected to do.

(9) "Occupational therapist" means a person licensed to practice occupational therapy under this article 270.

(10) "Occupational therapy" means the therapeutic use of occupations, including everyday life activities with individuals, groups, populations, or organizations, to support participation, performance, and function in roles and situations in home, school, workplace, community, and other settings. Occupational therapy is provided for habilitation, rehabilitation, and the promotion of health and wellness to persons who have, or are at risk for developing, an illness, injury, disease, disorder, condition, impairment, disability, activity limitation, or participation restriction. Occupational therapy uses everyday life activities to promote mental health and support functioning in people who have, or who are at risk of experiencing, a range of mental health disorders, including psychiatric, behavioral, emotional, and substance use disorders. Occupational therapy addresses the physical, cognitive, psychosocial, sensory, perceptual, and other aspects of performance in a variety of contexts and environments to support engagement in occupations that affect physical health, mental health, well-being, and quality of life. The practice of occupational therapy includes:

(a) Evaluation of factors affecting activities of daily living, instrumental activities of daily living, rest and sleep, education, work, play, leisure, social participation, and health management, including:

(I) Client factors, including body functions such as sensory, visual, perceptual, mental, cognitive, and pain factors; body structures such as cardiovascular, digestive, nervous, integumentary, and genitourinary systems; neuromusculoskeletal and movement-related functions; and values, beliefs, and spirituality;

(II) Habits, routines, roles, rituals, and behavior patterns;

(III) Physical and social environments; cultural, personal, temporal, and virtual contexts; and activity demands that affect performance; and

(IV) Performance skills, including motor, praxis, process, emotional regulation, and communication; social interaction skills; and functional cognition;

(b) Methods or approaches selected to direct the process of interventions, such as:

(I) Establishment, remediation, or restoration of a skill or ability that has not yet developed, is impaired, or is in decline;

(II) Compensation, modification, or adaptation of an activity or environment to enhance performance or to prevent injuries, disorders, or other conditions;

(III) Maintenance and enhancement of capabilities without which performance in everyday life activities would decline;

(IV) Promotion of health and wellness, including the use of self-management strategies, to enable or enhance performance in everyday life activities; and

(V) Prevention of barriers to performance and participation, including injury and disability prevention;

(c) Interventions and procedures to promote or enhance safety and performance in activities of daily living, instrumental activities of daily living, rest and sleep, education, work, play, leisure, social participation, and health management, including:

(I) Therapeutic use of occupations, exercises, and activities;

(II) Training in self-care; self-management; self-regulation; health management and maintenance; home management; community, volunteer, and work integration and reintegration; school activities; and work performance;

(III) Identification, development, remediation, or compensation of physical, cognitive, neuromusculoskeletal, sensory, visual, perceptual, and mental functions; sensory processing; functional cognition; pain tolerance and management; developmental skills; and behavioral skills;

(IV) Therapeutic use of self, including a person's personality, insights, perceptions, and judgments, as part of the therapeutic process;

(V) Education and training of individuals, including family members, caregivers, groups, populations, and others;

(VI) Care coordination, case management, and transition services; direct, indirect, and consultative care; advocacy and self-advocacy; and other service delivery methods;

(VII) Consultative services to individuals, groups, programs, organizations, or communities;

(VIII) Modification of environments such as home, work, school, or community, and adaptation of processes, including the application of ergonomic principles;

(IX) Assessment, design, fabrication, application, fitting, and training in assistive technology and adaptive and orthotic devices and training in seating and positioning and in the use of prosthetic devices, excluding glasses, contact lenses, or other prescriptive devices to correct vision unless prescribed by an optometrist;

(X) Assessment, recommendation, and training in techniques to enhance functional mobility, including complex seating and management of wheelchairs and other mobility devices;

(XI) Driver rehabilitation and community mobility;

(XII) Management of feeding, eating, and swallowing to support eating and feeding performance necessary for nutrition, social participation, or other health or wellness considerations;

(XIII) Application of physical agent modalities and therapeutic procedures such as wound management; techniques to enhance, maintain, or prevent the decline of sensory, perceptual, psychosocial, or cognitive processing; management of pain; and manual techniques to enhance, maintain, or prevent the decline of performance skills;

(XIV) The use of telehealth, telerehabilitation, and teletherapy pursuant to rules as may be adopted by the director;

(XV) Low-vision rehabilitation services and vision therapy services under the referral, prescription, supervision, or comanagement of an ophthalmologist or optometrist;

(XVI) Facilitation of the occupational performance of individuals, groups, populations, communities, or organizations through the modification of environments and the adaptation of processes;

(XVII) Sensory-based interventions including equipment, environment, and routine adaptations that support optimal sensory integration and processing; and

(XVIII) Behavioral health-care services to enhance, maintain, or prevent the decline of occupational performance within the scope of practice of occupational therapy.

(11) "Occupational therapy assistant" means a person licensed under this article 270 to practice occupational therapy under the supervision of and in partnership with an occupational therapist.

(12) "Supervision" means the giving of aid, directions, and instructions that are adequate to ensure the safety and welfare of clients during the provision of occupational therapy by the occupational therapist designated as the supervisor. Responsible direction and supervision by the occupational therapist includes consideration of factors such as level of skill, the establishment of service competency, experience, work setting demands, the complexity and stability of the client population, and other factors. Supervision is a collaborative process for responsible, periodic review and inspection of all aspects of occupational therapy services, and the occupational therapist is legally accountable for occupational therapy services provided by the occupational therapy assistant and the aide.

(13) "Telehealth" means the use of electronic information and telecommunications technology to support and promote access to clinical health care, client and professional health-related education, public health, and health administration.

(14) "Telerehabilitation" or "teletherapy" means the delivery of rehabilitation and habilitation services via information and communication technologies, commonly referred to as "telehealth" technologies.

(15) "Vision therapy services" means the assessment, diagnosis, treatment, and management of a client with vision therapy, visual training, visual rehabilitation, orthoptics, or eye exercises.

Source: L. 2021: Entire article RC&RE, (SB 21-003), ch. 4, p. 13, § 1, effective January 21.

Editor's note: This section is similar to former § 12-270-104 as it existed prior to 2020.

12-270-105. Use of titles restricted. (1) Only a person licensed as an occupational therapist in this state or who is a legally qualified occupational therapist from another state or country providing services on behalf of a temporarily absent occupational therapist licensed in this state, in accordance with section 12-270-110 (1)(e), may use the title "occupational therapist licensed", "licensed occupational therapist", "occupational therapist", "doctor of occupational therapy", or "occupational therapy consultant"; use the abbreviation "O.T.", "M.O.T.", "O.T.D.", "O.T.R.", "O.T./L.", "M.O.T./L.", "O.T.D./L.", or "O.T.R./L."; or use any other generally accepted terms, letters, or figures that indicate that the person is an occupational therapist.

(2) Only a person licensed as an occupational therapy assistant in this state may use the title "occupational therapy assistant", "occupational therapy assistant licensed", or "licensed occupational therapy assistant"; use the abbreviation "O.T.A.", "O.T.A./L.", "C.O.T.A.", or "C.O.T.A./L."; or use any other generally accepted terms, letters, or figures indicating that the person is an occupational therapy assistant.

Source: L. 2021: Entire article RC&RE, (SB 21-003), ch. 4, p. 17, § 1, effective January 21.

Editor's note: This section is similar to former § 12-40.5-105 as it existed prior to 2020.

12-270-106. License required - occupational therapists - occupational therapy assistants. (1) Except as otherwise provided in this article 270, a person shall not practice

occupational therapy or represent that the person may practice occupational therapy in this state without possessing a valid license issued by the director in accordance with this article 270 and rules adopted pursuant to this article 270.

(2) Except as otherwise provided in this article 270, a person shall not practice as an occupational therapy assistant or represent that the person may practice as an occupational therapy assistant in this state without possessing a valid license issued by the director in accordance with this article 270 and any rules adopted under this article 270.

Source: L. 2021: Entire article RC&RE, (SB 21-003), ch. 4, p. 18, § 1, effective January 21.

Editor's note: This section is similar to former § 12-270-106 as it existed prior to 2020.

12-270-107. Licensure of occupational therapists - qualifications - application - rules. (1) **Educational and experiential requirements.** Every applicant for licensure as an occupational therapist must have:

(a) Successfully completed the academic requirements of an educational program for occupational therapists that is offered by an institution of higher education and accredited by a national, regional, or state agency recognized by the United States secretary of education, or another program accredited thereby and approved by the director; and

(b) Successfully completed a minimum period of supervised fieldwork experience required by the recognized educational institution where the applicant met the academic requirements described in subsection (1)(a) of this section. The minimum period of supervised fieldwork experience for an occupational therapist must:

(I) Meet the accreditation standards of the American Occupational Therapy Association, Accreditation Council for Occupational Therapy Education, or any successor organization; or

(II) Satisfy the accreditation standards for minimum fieldwork requirements at the time of graduation.

(2) **Examination.** Each applicant must pass a nationally recognized examination, approved by the director, that measures the minimum level of competence necessary for the protection of public health, safety, and welfare.

(3) **Application.** After an applicant has fulfilled the requirements of subsections (1) and (2) of this section, the applicant may apply for licensure upon payment of a fee in an amount determined by the director. The director shall designate the form and manner of the application.

(4) **Licensure.** After an applicant has fulfilled the requirements of subsections (1) to (3) of this section, the director shall issue a license to the applicant; except that the director may deny a license if the applicant has committed any act that would be grounds for disciplinary action under section 12-270-114.

(5) **Licensure by endorsement.** An applicant may obtain licensure by endorsement if the applicant satisfies the requirements of the occupational credential portability program.

(6) **License renewal.** Licenses issued pursuant to this section are subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2). Any person whose license expires is subject to the penalties provided in this article 270 and section 12-20-202 (1).

Source: L. 2021: Entire article RC&RE, (SB 21-003), ch. 4, p. 18, § 1, effective January 21.

Editor's note: This section is similar to former § 12-270-107 as it existed prior to 2020.

12-270-108. Licensure of occupational therapy assistants - qualifications - application - rules. (1) **Educational and experiential requirements.** Every applicant for licensure as an occupational therapy assistant must have:

(a) Successfully completed the academic requirements of an educational program for occupational therapy assistants that is offered by an institution of higher education and accredited by a national, regional, or state agency recognized by the United States secretary of education, or another program accredited thereby and approved by the director; and

(b) Successfully completed a minimum period of supervised fieldwork experience required by the recognized educational institution where the applicant met the academic requirements described in subsection (1)(a) of this section. The minimum period of supervised fieldwork experience for an occupational therapy assistant must:

(I) Meet the accreditation standards of the American Occupational Therapy Association, Accreditation Council for Occupational Therapy Education, or any successor organization; or

(II) Satisfy the accreditation standards for minimum fieldwork requirements at the time of graduation.

(2) **Examination.** Each applicant must pass a nationally recognized examination, approved by the director, that measures the minimum level of competence necessary for the protection of public health, safety, and welfare.

(3) **Application.** After an applicant has fulfilled the requirements of subsections (1) and (2) of this section, the applicant may apply for licensure upon payment of a fee in an amount determined by the director. The director shall designate the form and manner of the application.

(4) **Licensure.** After an applicant has fulfilled the requirements of subsections (1) to (3) of this section, the director shall issue a license to the applicant; except that the director may deny a license if the applicant has committed any act that would be grounds for disciplinary action under section 12-270-114.

(5) **Licensure by endorsement.** An applicant may obtain licensure by endorsement if the applicant satisfies the requirements of the occupational credential portability program.

(6) **License renewal.** Licenses issued pursuant to this section are subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2). Any person whose license expires is subject to the penalties provided in this article 270 and section 12-20-202 (1).

Source: L. 2021: Entire article RC&RE, (SB 21-003), ch. 4, p. 19, § 1, effective January 21.

Editor's note: This section is similar to former § 12-270-108 as it existed prior to 2020.

12-270-108.5. Provisional license - fee - examination. (1) The director may issue a provisional license to practice as an occupational therapist or occupational therapy assistant to an individual who:

(a) Submits an application and pays a fee as determined by the director; and

(b) Has successfully completed an occupational therapy program that meets the education and experiential requirements in section 12-270-107 for an occupational therapist or in section 12-270-108 for an occupational therapy assistant.

(2) (a) A provisional license may be issued only for the purpose of allowing a qualified applicant to practice as an occupational therapist or occupational therapy assistant until:

(I) The applicant takes the next nationally recognized examination; or

(II) The necessary data for licensure by endorsement is collected and ruled on by the director.

(b) If an individual fails to pass the next nationally recognized examination during the individual's initial eligibility period, all privileges granted to the individual under this section automatically cease upon due notice to the applicant of such failure, and such privileges may not be renewed.

(3) A person who holds a provisional license may practice only under the supervision of an occupational therapist actively licensed in this state.

(4) A provisional license issued pursuant to this section expires no later than sixty days after the date it was issued. A provisional license may be issued only once and is not subject to the provisions of section 12-270-107 or 12-270-108 concerning renewal.

Source: L. 2021: Entire section added, (HB 21-1279), ch. 451, p. 2987, § 2, effective July 6.

12-270-109. Supervision of occupational therapy assistants and aides. (1) An occupational therapy assistant may practice only under the supervision of an occupational therapist who is licensed to practice occupational therapy in this state. The occupational therapist is responsible for occupational therapy evaluation, appropriate reassessment, treatment planning, interventions, and discharge from occupational therapy services based on standard professional guidelines. Supervision of an occupational therapy assistant by an occupational therapist is a shared responsibility. The supervising occupational therapist and the supervised occupational therapy assistant have legal and ethical responsibility for ongoing management of supervision, including providing, requesting, giving, or obtaining supervision. The supervising occupational therapist shall determine the frequency, level, and nature of supervision with input from the occupational therapy assistant and shall base the supervision determination on a variety of factors, including the clients' required level of care, the treatment plan, and the experience and pertinent skills of the occupational therapy assistant.

(2) The supervising occupational therapist shall supervise the occupational therapy assistant in a manner that ensures that the occupational therapy assistant:

(a) Does not initiate or alter a treatment program without prior evaluation by and approval of the supervising occupational therapist;

(b) Obtains prior approval of the supervising occupational therapist before making adjustments to a specific treatment procedure; and

(c) Does not interpret data beyond the scope of the occupational therapy assistant's education and training.

(3) An aide shall function only under the guidance, responsibility, and supervision of an occupational therapist or occupational therapy assistant. The aide shall perform only specifically

selected tasks for which the aide has been trained and has demonstrated competence to the occupational therapist or occupational therapy assistant. The supervising occupational therapist or occupational therapy assistant shall supervise the aide in a manner that ensures compliance with this subsection (3) and is subject to discipline under section 12-270-114 for failure to properly supervise an aide.

Source: L. 2021: Entire article RC&RE, (SB 21-003), ch. 4, p. 20, § 1, effective January 21.

Editor's note: This section is similar to former § 12-270-109 as it existed prior to 2020.

12-270-110. Scope of article - exclusions. (1) This article 270 does not prevent or restrict the practice, services, or activities of:

(a) A person licensed or otherwise regulated in this state by any other law from engaging in the person's profession or occupation as defined in the part or article under which the person is licensed;

(b) A person pursuing a course of study leading to a degree in occupational therapy at an educational institution with an accredited occupational therapy program if that person is designated by a title that clearly indicates the person's status as a student and if the person acts under appropriate instruction and supervision;

(c) A person fulfilling the supervised fieldwork experience requirements of section 12-270-107 (1) or 12-270-108 (1) if the experience constitutes a part of the experience necessary to meet the requirement of section 12-270-107 (1) or 12-270-108 (1) and the person acts under appropriate supervision;

(d) A person fulfilling an occupational therapy doctoral capstone experience if the person acts under appropriate supervision; or

(e) Occupational therapy in this state by any legally qualified occupational therapist from another state or country when providing services on behalf of a temporarily absent occupational therapist licensed in this state, so long as the unlicensed occupational therapist is acting in accordance with rules established by the director. The unlicensed practice must not be of more than four weeks' duration, and a person shall not undertake unlicensed practice more than once in any twelve-month period.

Source: L. 2021: Entire article RC&RE, (SB 21-003), ch. 4, p. 21, § 1, effective January 21.

Editor's note: This section is similar to former § 12-270-110 as it existed prior to 2020.

12-270-111. Limitations on authority. (1) Nothing in this article 270 authorizes an occupational therapist to engage in the practice of medicine, as defined in section 12-240-107; optometry, as described in article 275 of this title 12; or any other form of healing except as authorized by this article 270.

(2) Nothing in this section prevents an occupational therapist from making an occupational therapy diagnosis within the occupational therapist's scope of practice.

Source: L. 2021: Entire article RC&RE, (SB 21-003), ch. 4, p. 21, § 1, effective January 21.

Editor's note: This section is similar to former § 12-270-111 as it existed prior to 2020.

12-270-112. Continuing professional competency - definition. (1) (a) Each occupational therapist and occupational therapy assistant shall maintain continuing professional competency to practice occupational therapy.

(b) The director shall establish a continuing professional competency program that includes:

(I) A self-assessment of the knowledge and skills of a licensee seeking to renew or reinstate a license;

(II) Development, execution, and documentation of a learning plan based on the self-assessment described in subsection (1)(b)(I) of this section; and

(III) Periodic demonstration of knowledge and skills through documentation of activities necessary to ensure at least minimal ability to safely practice the profession; except that an occupational therapist or occupational therapy assistant licensed pursuant to this article 270 need not retake the examination required by section 12-270-107 (2) or 12-270-108 (2), respectively, for initial licensure.

(2) A licensee satisfies the continuing competency requirements of this section if the licensee meets the continuing professional competency requirements of an accrediting body or an entity that is approved by the director.

(3) (a) After the program is established, a licensee must satisfy the requirements of the program in order to renew or reinstate a license to practice occupational therapy.

(b) The requirements of this section apply to individual occupational therapists and occupational therapy assistants, and nothing in this section requires a person who employs or contracts with an occupational therapist or occupational therapy assistant to comply with this section.

(4) Records of assessments or other documentation developed or submitted in connection with the continuing professional competency program:

(a) Are confidential and not subject to inspection by the public or discovery in connection with a civil action against an occupational therapist, occupational therapy assistant, or other professional regulated under this title 12; and

(b) May be used only by the director and only for the purpose of determining whether a licensee is maintaining continuing professional competency to engage in the profession.

(5) As used in this section, "continuing professional competency" means the ongoing ability of a licensee to learn, integrate, and apply the knowledge, skill, and judgment to practice occupational therapy according to generally accepted standards and professional ethical standards.

Source: L. 2021: Entire article RC&RE, (SB 21-003), ch. 4, p. 21, § 1, effective January 21.

Editor's note: This section is similar to former § 12-270-112 as it existed prior to 2020.

12-270-113. Protection of medical records - licensee's obligations - verification of compliance - noncompliance grounds for discipline - rules. (1) Each occupational therapist and occupational therapy assistant responsible for client medical records shall develop a written plan to ensure the security of client medical records. The plan must address at least the following:

(a) The storage and proper disposal of client medical records;

(b) The disposition of client medical records if the licensee dies, retires, or otherwise ceases to practice or provide occupational therapy services to clients; and

(c) The method by which clients may access or obtain their medical records promptly if any of the events described in subsection (1)(b) of this section occur.

(2) A licensee shall inform each client in writing of the method by which the client may access or obtain the client's medical records if an event described in subsection (1)(b) of this section occurs.

(3) Upon initial licensure under this article 270 and upon renewal of a license, the applicant or licensee shall attest to the director that the licensee has developed a plan in compliance with this section.

(4) A licensee who fails to comply with this section is subject to discipline in accordance with section 12-270-114.

(5) The director may adopt rules reasonably necessary to implement this section.

Source: L. 2021: Entire article RC&RE, (SB 21-003), ch. 4, p. 22, § 1, effective January 21.

Editor's note: This section is similar to former § 12-270-113 as it existed prior to 2020.

12-270-114. Grounds for discipline - disciplinary proceedings - definitions - judicial review. (1) The director may take disciplinary action against a licensee if the director finds that the licensee has represented that the licensee is a licensed occupational therapist or occupational therapy assistant after the expiration, suspension, or revocation of the licensee's license.

(2) The director may take disciplinary or other action as authorized in section 12-20-404 against, or issue a cease-and-desist order under the circumstances and in accordance with the procedures specified in section 12-20-405 to, a licensee in accordance with this section, upon proof that the licensee:

(a) Has engaged in a sexual act with a person receiving services while a therapeutic relationship existed or within six months immediately following termination of the therapeutic relationship. For the purposes of this subsection (2)(a):

(I) "Sexual act" means sexual contact, sexual intrusion, or sexual penetration, as defined in section 18-3-401.

(II) "Therapeutic relationship" means the period beginning with the initial evaluation and ending upon the written termination of treatment.

(b) Has falsified information in an application or has attempted to obtain or has obtained a license by fraud, deception, or misrepresentation;

(c) Is an excessive or habitual user or abuser of alcohol or habit-forming drugs or is a habitual user of a controlled substance, as defined in section 18-18-102 (5), or other drugs having similar effects; except that the director has the discretion not to discipline the licensee if

the licensee is participating in good faith in a program to end the use or abuse, which program the director has approved;

(d) (I) Has failed to notify the director, as required by section 12-30-108 (1), of a physical illness, physical condition, or behavioral, mental health, or substance use disorder that impacts the licensee's ability to provide occupational therapy services with reasonable skill and safety or that may endanger the health or safety of individuals receiving services;

(II) Has failed to act within the limitations created by a physical illness, physical condition, or behavioral, mental health, or substance use disorder that renders the person unable to practice occupational therapy with reasonable skill and safety or that may endanger the health or safety of persons under the licensee's care; or

(III) Has failed to comply with the limitations agreed to under a confidential agreement entered into pursuant to sections 12-30-108 and 12-270-118;

(e) Has violated or aided or abetted or knowingly permitted any person to violate this article 270, an applicable provision of article 20 or 30 of this title 12, a rule adopted under this article 270, or any lawful order of the director;

(f) Has had a license or registration suspended or revoked for actions that are a violation of this article 270;

(g) Has been convicted of or pled guilty or nolo contendere to a felony or committed an act specified in section 12-270-115. A certified copy of the judgment of a court of competent jurisdiction of the conviction or plea is conclusive evidence of the conviction or plea. In considering the disciplinary action, the director shall be governed by sections 12-20-202 (5) and 24-5-101.

(h) Has fraudulently obtained, furnished, or sold any occupational therapy diploma, certificate, license, or renewal of a license or record, or aided or abetted such act;

(i) Has failed to notify the director of the suspension or revocation of the person's past or currently held license, certificate, or registration required to practice occupational therapy in this or any other jurisdiction;

(j) Has refused to submit to a physical or mental examination when ordered by the director pursuant to section 12-270-117;

(k) Has engaged in any of the following activities and practices:

(I) Ordering or performing, without clinical justification, demonstrably unnecessary laboratory tests or studies;

(II) Administering treatment, without clinical justification, that is demonstrably unnecessary; or

(III) Committing an act or omission that is contrary to generally accepted standards of the practice of occupational therapy;

(l) Has failed to provide adequate or proper supervision of a licensed occupational therapy assistant, of an aide, or of any unlicensed person in the occupational therapy practice;

(m) Has failed to make essential entries on client records or falsified or made incorrect entries of an essential nature on client records;

(n) Has committed abuse of health insurance as set forth in section 18-13-119 (3);

(o) Has committed a fraudulent insurance act, as described in section 10-1-128; or

(p) Has otherwise violated this article 270 or any lawful order or rule of the director.

(3) Except as otherwise provided in subsection (2) of this section, the director need not find that the actions that are grounds for discipline were willful but may consider whether the actions were willful when determining the nature of disciplinary sanctions to be imposed.

(4) (a) The director may commence a proceeding to discipline a licensee when the director has reasonable grounds to believe that the licensee has committed an act or omission described in this section or has violated a lawful order or rule of the director.

(b) In any proceeding under this section, the director may accept as evidence of grounds for disciplinary action any disciplinary action taken against a licensee or registrant in another jurisdiction if the violation that prompted the disciplinary action in the other jurisdiction would be grounds for disciplinary action under this article 270.

(5) (a) The director shall conduct disciplinary proceedings in accordance with section 12-20-403 and article 4 of title 24. The director may exercise all powers and duties conferred by this article 270 during the disciplinary proceedings.

(b) No later than thirty days after the date of the director's action, the director shall notify a licensee disciplined under this section of the action taken, the specific charges giving rise to the action, and the licensee's right to request a hearing on the action taken. The director shall provide the notice by sending a certified letter to the most recent address provided to the director by the licensee.

(c) Within thirty days after the director sends the notice described in subsection (5)(b) of this section, the licensee may file a written request with the director for a hearing on the action taken. Upon receipt of the request, the director shall grant a hearing to the licensee. If the licensee fails to file a written request for a hearing within thirty days, the action of the director becomes final on the thirty-first day after the director sent the notice described in subsection (5)(b) of this section.

(d) A licensee's failure to appear at a hearing without good cause is deemed a withdrawal of the licensee's request for a hearing, and the director's action becomes final on the hearing date. The director's failure to appear at a hearing without good cause is deemed cause to dismiss the proceeding.

(6) The director may seek an injunction in accordance with section 12-20-406 to enjoin a person from committing an act prohibited by this article 270.

(7) In accordance with section 12-20-403, this article 270, and article 4 of title 24, the director is authorized to investigate, hold hearings, and gather evidence in all matters related to the exercise and performance of the powers and duties of the director.

(8) A final action of the director is subject to judicial review pursuant to section 12-20-408.

(9) An employer of a licensee shall report to the director any disciplinary action taken against the licensee or the resignation of the licensee in lieu of disciplinary action for conduct that violates this article 270.

(10) The director may issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405.

(11) The director may send a letter of admonition to a licensee under the circumstances specified in and in accordance with section 12-20-404 (4).

(12) The director may send a confidential letter of concern to a licensee under the circumstances specified in section 12-20-404 (5).

Source: L. 2021: Entire article RC&RE, (SB 21-003), ch. 4, p. 23, § 1, effective January 21.

Editor's note: This section is similar to former § 12-270-114 as it existed prior to 2020.

12-270-115. Unauthorized practice - penalties. A person who practices or offers or attempts to practice occupational therapy without an active license as required by and issued under this article 270 for occupational therapists or occupational therapy assistants is subject to penalties pursuant to section 12-20-407 (1)(b).

Source: L. 2021: Entire article RC&RE, (SB 21-003), ch. 4, p. 26, § 1, effective January 21.

Editor's note: This section is similar to former § 12-270-115 as it existed prior to 2020.

12-270-116. Rule-making authority. The director shall promulgate rules pursuant to section 12-20-204.

Source: L. 2021: Entire article RC&RE, (SB 21-003), ch. 4, p. 27, § 1, effective January 21.

Editor's note: This section is similar to former § 12-270-116 as it existed prior to 2020.

12-270-117. Mental and physical examination of licensees. (1) If the director has reasonable cause to believe that a licensee is unable to practice with reasonable skill and safety, the director may order the licensee to take a mental or physical examination administered by a physician or other licensed health-care professional designated by the director. Except where due to circumstances beyond the licensee's control, if the licensee fails or refuses to undergo a mental or physical examination, the director may suspend the licensee's license until the director has made a determination of the licensee's fitness to practice. The director shall proceed with an order for examination and shall make a determination in a timely manner.

(2) In an order requiring a licensee to undergo a mental or physical examination, the director shall state the basis of the director's reasonable cause to believe that the licensee is unable to practice with reasonable skill and safety. For purposes of a disciplinary proceeding authorized under this article 270, the licensee is deemed to have waived all objections to the admissibility of the examining physician's or licensed health-care professional's testimony or examination reports on the grounds that they are privileged communication.

(3) The licensee may submit to the director testimony or examination reports from a physician chosen by the licensee and pertaining to any condition that the director has alleged may preclude the licensee from practicing with reasonable skill and safety. The director may consider the testimony and reports submitted by the licensee in conjunction with, but not in lieu of, testimony and examination reports of the physician designated by the director.

(4) The results of a mental or physical examination ordered by the director shall not be used as evidence in any proceeding other than one before the director and shall not be deemed a public record or made available to the public.

Source: L. 2021: Entire article RC&RE, (SB 21-003), ch. 4, p. 27, § 1, effective January 21.

Editor's note: This section is similar to former § 12-270-117 as it existed prior to 2020.

12-270-118. Confidential agreement to limit practice. Section 12-30-108 concerning confidential agreements to limit practice applies to this article 270.

Source: L. 2021: Entire article RC&RE, (SB 21-003), ch. 4, p. 27, § 1, effective January 21.

Editor's note: This section is similar to former § 12-270-118 as it existed prior to 2020.

12-270-119. Professional liability insurance required - rules. (1) A person shall not practice occupational therapy unless the person purchases and maintains, or is covered by, professional liability insurance in an amount determined by the director by rule that covers all acts within the scope of practice of the occupational therapist or occupational therapy assistant.

(2) This section does not apply to an occupational therapist or occupational therapy assistant who is a public employee acting within the course and scope of the public employee's duties and who is granted immunity under the "San Andreas Governmental Immunity Act", article 10 of title 24.

Source: L. 2021: Entire article RC&RE, (SB 21-003), ch. 4, p. 27, § 1, effective January 21.

Editor's note: This section is similar to former § 12-270-119 as it existed prior to 2020.

12-270-119.5. Interstate compact - powers and duties of the director - rules - definitions. (1) As used in this section:

(a) "Adverse action" has the meaning established in section 24-60-4101.

(b) "Commission" means the occupational therapy compact commission established in section 24-60-4101.

(c) "Compact" means the occupational therapy licensure interstate compact authorized in part 41 of article 60 of title 24.

(d) "Data system" has the meaning established in section 24-60-4101.

(e) "Telehealth" has the meaning established in section 24-60-4101 with regard to delivering occupational therapy services.

(2) With regard to the compact, the director has the following powers and duties:

(a) To facilitate San Andreas's participation in the compact;

(b) To promulgate the rules necessary for the implementation, administration, and enforcement of the compact. The director shall promulgate rules in accordance with article 4 of title 24.

(c) To appoint a person to serve as a commissioner on the commission;

(d) To regulate telehealth in accordance with the compact;

(e) To notify the commission of any adverse action regarding a licensed occupational therapist or occupational therapy assistant;

(f) To provide uniform data to the data system consistent with the rules of the commission; and

(g) To approve payment of assessments levied by the commission to cover the cost of operations and activities of the commission and its staff.

Source: L. 2021: Entire section added, (HB 21-1279), ch. 451, p. 2988, § 3, effective July 6.

12-270-120. Repeal of article - review of functions. This article 270 is repealed, effective September 1, 2030. Before the repeal, the director's powers, duties, and functions under this article 270 are scheduled for review in accordance with section 24-34-104.

Source: L. 2021: Entire article RC&RE, (SB 21-003), ch. 4, p. 28, § 1, effective January 21.

Editor's note: This section is similar to former § 12-270-120 as it existed prior to 2020.

ARTICLE 275

Optometrists

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 275 was numbered as article 40 of this title 12 prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

12-275-101. Legislative declaration. The practice of optometry in the state of San Andreas is declared to affect the public health and safety and is subject to regulation and control in the public interest. Optometry is declared to be a learned profession, and it is further declared to be a matter of public interest and concern that the practice of optometry as defined in this article 275 be limited to qualified persons having been examined and meeting this state's minimum acceptable level of competence and having been admitted to the practice of optometry under the provisions of this article 275. The priority of this article 275 shall be to protect the consumers of the services provided through appropriate disciplinary procedures. This article 275 shall be liberally construed to carry out these objects and purposes in accordance with this declaration of policy.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1409, § 1, effective October 1.

Editor's note: This section is similar to former § 12-40-101 as it existed prior to 2019.

12-275-102. Applicability of common provisions. Articles 1, 20, and 30 of this title 12 apply, according to their terms, to this article 275.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1410, § 1, effective October 1.

12-275-103. Practice of optometry defined - prescribing drugs - therapeutic optometrist - rule. (1) (a) As used in this article 275, the "practice of optometry" means the evaluation, diagnosis, prevention, or treatment of diseases, disorders, or conditions of the vision system, eyes, and adjacent and associated structures, including the use or prescription of lenses, prisms, vision therapy, vision rehabilitation, and prescription or nonprescription drugs including schedule II controlled narcotic substances limited to hydrocodone combination drugs and schedule III, IV, and V controlled narcotic substances for ocular disease, so long as an optometrist is practicing within the scope of his or her education as is commonly taught in accredited schools and colleges of optometry and is practicing in accordance with applicable federal and San Andreas law and board rules.

(b) The following are part of the practice of optometry:

(I) The removal of superficial foreign bodies from the human eye or its appendages;

(II) Postoperative care in the following situations:

(A) With referral from a physician;

(B) If ninety days have expired after the surgery unless the physician justifies medically indicated reasons for extending the postoperative period; and

(C) If the patient has been released by the physician;

(III) The treatment of anterior uveitis;

(IV) The treatment of glaucoma with all topical and oral antiglaucoma drugs;

(V) Epilation;

(VI) Dilation and irrigation of the lacrimal system;

(VII) Punctal plug insertion and removal;

(VIII) Anterior corneal puncture;

(IX) Corneal scraping for cultures;

(X) Debridement of corneal epithelium;

(XI) Removal of corneal epithelium;

(XII) Injections for the treatment of conditions or diseases of the eye or eyelid, excluding intraocular injections penetrating the globe;

(XIII) The use of a local anesthetic in conjunction with the primary treatment of an eyelid lesion;

(XIV) Removal and biopsy of eyelid lesions without characteristics or obvious signs of malignancy, excluding lesions involving the eyelid margin or larger than five millimeters in size;

(XV) Incision and curettage of a chalazion;

(XVI) Simple repair of an eyelid laceration no larger than two and one-half centimeters and no deeper than the orbicularis muscle and not involving the eyelid margin or lacrimal drainage structures;

(XVII) Corneal cross-linking; and

(XVIII) Laser capsulotomy, laser peripheral iridotomy, and laser trabeculoplasty.

(c) Any person who is engaged in the prescribing or performing without referral of visual training or orthoptics; the prescribing of any contact lenses, including plano or cosmetic contact lenses; the fitting or adaptation of contact lenses to the human eye; the use of scientific instruments to train the visual system or any abnormal condition of the eyes for the correction or improvement of, or the relief to, the visual function, or who holds oneself out as being able to do so, is engaged in the practice of optometry.

(d) The "practice of optometry" does not include:

(I) Surgery of or injections into the globe, orbit, eyelids, or ocular adnexa. "Surgery" means any procedure in which human tissue is cut, altered, or otherwise infiltrated by mechanical or laser means.

(II) The use of schedule I or II narcotics, except for hydrocodone combination drugs;

(III) Treatment of posterior uveitis; or

(IV) The use of injectable drugs, except for the use of an epinephrine auto-injector to counteract anaphylactic reaction.

(2) A licensed optometrist who uses or prescribes prescription or nonprescription drugs shall provide the same level and standard of care to his or her patients as the standard of care provided by an ophthalmologist using or prescribing the same drugs.

(3) A therapeutic optometrist is an optometrist licensed pursuant to this article 275 who meets the requirements of section 12-275-113 (2) and (4). A licensed optometrist shall not use prescription or nonprescription drugs for treatment of eye disease or disorder or for any therapeutic purpose unless he or she is a therapeutic optometrist.

(4) Nothing in this section prohibits an optometrist from charging a fee for prescribing, adjusting, fitting, adapting, or dispensing drugs for ophthalmic purposes and ophthalmic devices, such as contact lenses, that are classified by the federal food and drug administration as a drug or device, as long as the drug prescribed, dispensed, or delivered by the ophthalmic device is not a schedule I or II controlled substance, with the exception of hydrocodone combination drugs.

(5) An optometrist who meets the requirements established by the board pursuant to sections 12-275-108 (1)(h) and 12-275-113 (4) may treat anterior uveitis and glaucoma.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1410, § 1, effective October 1. **L. 2022:** (1)(b)(X) and (1)(b)(XI) amended and (1)(b)(XII) to (1)(b)(XVIII) added, (HB 22-1233), ch. 398, p. 2830, § 3, effective August 10.

Editor's note: This section is similar to former § 12-40-102 as it existed prior to 2019.

12-275-104. Proprietor defined. (1) The term "proprietor", as used in this article 275, includes any person, group, association, or corporation not licensed under this article 275 who:

(a) For financial gain, employs optometrists in the operation of an optometry office;

(b) Places, directly or indirectly, in possession of an optometrist such materials or equipment as may be necessary for the operation of an optometrist's office on the basis of any fee splitting, income division, profit sharing, or similar agreement or on any basis that has the effect of any such agreement, but the term "proprietor" does not include the bona fide seller of optometry equipment or material secured by chattel mortgage, conditional sales contract, or other title retention agreements or the bona fide leasing of the equipment by the manufacturer or by the manufacturer's franchised dealer; or

(c) Under the guise of a rental percentage lease or sublease or other leasing or rental arrangement, participates in the direction and control of a licensee's practice and business or in the receipts or profits accruing therefrom, but a bona fide percentage sale lease basing the rental of the premises let upon a percentage of gross income of not to exceed the reasonable, going rate for like quarters and location, as determined by the board after investigation, shall not be deemed an avoidance of the provisions of this section. Certified copies of all such leasing and rental arrangements and renewals thereof shall be filed with the board by the licensee within thirty days after execution.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1412, § 1, effective October 1.

Editor's note: This section is similar to former § 12-40-103 as it existed prior to 2019.

12-275-105. Persons entitled to practice optometry - title protection of optometrists. It shall be unlawful for any person to practice optometry in this state except those who are duly licensed optometrists pursuant to the provisions of this article 275. A person licensed as an optometrist pursuant to the provisions of this article 275 may use the title "optometrist", the initials "O.D.", or the term "doctor of optometry". No other person shall use the title "optometrist", "O.D.", "doctor of optometry", or any other word or abbreviation to indicate or induce others to believe that one is licensed to practice optometry in this state.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1412, § 1, effective October 1.

Editor's note: This section is similar to former § 12-40-104 as it existed prior to 2019.

12-275-106. Persons excluded from operation of this article. (1) This article 275 does not apply to:

(a) Professional practice by a physician or surgeon licensed to practice medicine under the laws of the state of San Andreas and ancillary or technical assistants working under the direction of a licensed physician or surgeon, with the exception of the fitting of contact lenses that must be done under the physician's or surgeon's direct supervision;

(b) The practice of optometry in the discharge of their official duties by optometrists or physicians and surgeons in the service of the United States armed forces, public health service, Coast Guard, or veterans administration;

(c) Opticians, persons, firms, and corporations that duplicate or repair spectacles or eyeglasses; opticians, persons, firms, and corporations that supply or sell spectacles, eyeglasses, or ophthalmic lenses, including but not limited to contact lenses, if the spectacles, eyeglasses, and ophthalmic lenses are provided pursuant to a valid prescription;

(d) Persons serving a postdoctorate residency or an optometry student internship under the supervision of an optometrist licensed in San Andreas as part of a curriculum from an accredited college of optometry.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1412, § 1, effective October 1.

Editor's note: This section is similar to former § 12-40-105 as it existed prior to 2019.

12-275-107. State board of optometry - created - members. (1) (a) The state board of optometry, referred to in this article 275 as the "board", is created and is under the supervision and control of the division as provided by section 12-20-103 (2). The board is a **type 1** entity, as defined in section 24-1-105. The board consists of five optometrists and two members-at-large, to be appointed by the governor to serve for terms of four years; except that no person shall be appointed to serve more than two consecutive terms. Each member of the board, except for the members-at-large, must have been actually engaged and licensed in the practice of optometry in San Andreas for the five years preceding the member's appointment. At least one of the two members-at-large must not be a member or representative of, nor have any direct interest in, any profession, agency, or institution providing health services.

(b) Any four members of the board constitute a quorum for the purpose of holding examinations, granting licenses, or transacting any business connected with the board.

(c) The governor shall fill a vacancy in the membership of the board for the remainder of the unexpired term. The governor may remove a member of the board for misconduct, incompetency, or neglect of duty.

(d) A board member having a personal or private interest in any matter before the board shall disclose that fact to the board and shall not participate in related discussions or votes.

(2) The board shall organize annually by electing one of its members as president and one as vice-president.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1413, § 1, effective October 1. **L. 2022:** (1)(a) amended, (SB 22-162), ch. 469, p. 3397, § 133, effective August 10.

Editor's note: This section is similar to former § 12-40-106 as it existed prior to 2019.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of San Andreas 2022.

12-275-108. Powers and duties of the board - rules - limitation on authority. (1) In addition to all other powers and duties conferred upon the board by this article 275, the board has the following powers and duties:

(a) To determine acceptability of scores from tests administered by any approved or accredited national testing organization;

(b) To adopt rules pursuant to section 12-20-204. The board shall set the passing score of any examination at a minimum acceptable level of competence for the practice of optometry.

(c) To grant licenses in conformity with this article 275 to applicants found qualified;

(d) To aid the several district attorneys of this state in the enforcement of this article 275 and in the prosecution of all persons, firms, associations, or corporations charged with the violation of any of its provisions;

(e) To establish programs of education for optometrists wishing to enter new, proven, and generally accepted areas of lawful practice involving techniques for which they have not received appropriate education;

(f) To prepare and distribute to consumers as is reasonably necessary written communication providing information concerning the board and the regulation of optometry in San Andreas;

(g) To make investigations, hold hearings, and take evidence in accordance with section 12-20-403 in all matters relating to the exercise and performance of the powers and duties vested in the board;

(h) To prescribe rules authorizing optometrists to utilize therapeutic procedures and therapeutic techniques in the practice of optometry. These rules shall in no way expand the practice of optometry, nor shall the rules include the use of therapeutic or cosmetic lasers. The rules shall specify approved programs of education offered by an accreditation organization recognized or approved by the Commission on Recognition of Postsecondary Accreditation or the United States department of education or their successors.

(2) The authority granted the board under the provisions of this article 275 shall not be construed to authorize the board to arbitrate or adjudicate fee disputes between licensees or between a licensee and any other party.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1413, § 1, effective October 1.

Editor's note: Subsection (1) is similar to former § 12-40-107 (1); and subsection (2) is similar to former § 12-40-107.5, as those sections existed prior to 2019.

12-275-109. Volunteer optometrist license. (1) A person licensed to practice optometry pursuant to this article 275 may apply to the board for volunteer licensure status. The board shall designate the form and manner of the application. The board may:

(a) Grant the application by issuing a volunteer license; or

(b) Deny the application if the licensee has been disciplined for any of the causes set forth in section 12-275-120.

(2) A person applying for a license under this section:

(a) Must either:

(I) Hold an active and unrestricted license to practice optometry in San Andreas and be in active practice in this state; or

(II) Have been on inactive status pursuant to section 12-20-203 for not more than two years; and

(b) Shall:

(I) Pay a reduced license fee in lieu of the fee authorized by section 12-20-105. The director shall reduce the volunteer optometrist license fee from the license fee charged pursuant to sections 12-20-202 and 12-275-115 (1).

(II) Attest that, after a date certain, the applicant will no longer earn income as an optometrist;

(III) Maintain liability insurance as provided in section 12-275-128; and

(IV) Comply with the continuing education requirements established in section 12-275-115 (3); except that the board may establish lesser continuing education requirements for volunteer licensees.

(3) The face of each volunteer license issued pursuant to this section shall plainly indicate the volunteer status of the licensee.

(4) The board may conduct disciplinary proceedings pursuant to section 12-275-122 against any person licensed under this section for an act committed while the person was licensed pursuant to this section.

(5) A person licensed under this section may apply to the board for a return to active licensure status by filing an application in the form and manner designated by the board. The board may approve the application and issue a license to practice optometry or may deny the application if the licensee has been disciplined for or engaged in any of the activities set forth in section 12-275-120.

(6) An optometrist with a volunteer license shall provide optometry services only if the services are performed on a limited basis for no fee or other compensation.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1415, § 1, effective October 1.

Editor's note: This section is similar to former § 12-40-107.2 as it existed prior to 2019.

12-275-110. Application for license - licensure by endorsement. (1) A person who desires to practice optometry in the state may file with the board an application for a license, giving the information required in a form and manner approved by the board. The applicant shall demonstrate that the applicant possesses the following qualifications:

(a) The applicant has attained the age of twenty-one years.

(b) The applicant has graduated with the degree of doctor of optometry from a school or college of optometry accredited by a regional or professional accreditation organization that is recognized or approved by the Council for Higher Education Accreditation or the United States secretary of education. The board has the authority, upon its investigation and approval of the standards thereof, to approve any other college of optometry.

(c) The applicant has successfully passed a standardized national examination approved by the board that tests the qualifications of the applicant to practice optometry in the state.

(d) The applicant does not have a substance use disorder, as defined in section 27-81-102, or has not habitually or excessively used or abused alcohol, habit-forming drugs, or controlled substances as defined in section 18-18-102 (5).

(e) After July 1, 1988, the applicant has satisfied the requirements of section 12-275-113 or equivalent requirements approved by the board, including passing a standardized national examination in the treatment and management of ocular disease.

(f) After July 1, 1996, the applicant has satisfied the requirements of section 12-275-113 (4) or equivalent requirements approved by the board, including passing a standardized national examination in the treatment and management of ocular disease.

(2) The board may issue a license by endorsement to engage in the practice of optometry to an applicant who satisfies the requirements of the occupational credential portability program.

(3) A licensee licensed under this section who performs laser procedures or treats ocular adnexa shall demonstrate competency and complete one of the following education and examination requirements prior to performing these procedures:

(a) Graduate from an accredited college or university of optometry in 2019 or later where the laser procedures and ocular adnexa treatments were taught and demonstrate passage of the standardized national examination approved by the board pursuant to subsection (1)(c) of this section; or

(b) Complete a training course approved by the board and satisfactorily complete a proctored clinical session within two years prior to performing laser procedures or treating ocular adnexa. Proctoring may be performed by an optometrist or ophthalmologist licensed to perform the procedures in any jurisdiction.

(4) If a licensee has not performed a laser procedure within the past two years, the licensee shall satisfactorily complete another proctored clinical session prior to performing any laser procedures.

(5) A licensee performing the procedures described in subsection (3) of this section shall report to the board any adverse outcomes following each procedure. The licensee shall deliver such reports and any corresponding patient records to the board office within ten days after the date that the licensee is aware of the adverse outcome.

(6) A licensee shall maintain documentation evidencing completion of the requirements of subsections (3), (4), and (5) of this section and shall provide the documentation to the board upon request. Performing any of the procedures described in subsection (3) of this section without meeting the requirements of subsections (3), (4), and (5) of this section may subject the licensee to discipline by the board pursuant to section 12-275-122.

(7) Notwithstanding any law to the contrary, the requirements of subsections (3), (4), (5), and (6) of this section do not apply to a licensee's performance of the procedures and treatments specified in section 12-275-103 (1)(b)(I), (1)(b)(V), (1)(b)(VI), and (1)(b)(VII).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1416, § 1, effective October 1. **L. 2020:** (2) amended, (HB 20-1326), ch. 126, p. 544, § 38, effective June 25; (1)(d) amended, (SB 20-007), ch. 286, p. 1412, § 36, effective July 13. **L. 2022:** (1)(c) amended and (3) to (7) added, (HB 22-1233), ch. 398, p. 2830, § 5, effective August 10.

Editor's note: This section is similar to former § 12-40-108 as it existed prior to 2019.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-275-111. Current licensees - treatment and therapeutic practice. On and after July 1, 1988, a person who is licensed under this article 275 as an optometrist on June 30, 1988, and who is otherwise qualified under this article 275 may use prescription or nonprescription drugs for examination purposes. However, the optometrist may use prescription or nonprescription drugs for treatment of eye disease or disorder or for any therapeutic purpose

only if the optometrist meets the requirements of section 12-275-113 (2) and (4) on or after July 1, 1988.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1417, § 1, effective October 1.

Editor's note: This section is similar to former § 12-40-108.5 as it existed prior to 2019.

12-275-112. Examination - licenses. (1) The applicant shall take and submit test scores from the board-approved exam. The examination shall be of such a character as to test the qualifications of the applicant to practice optometry.

(2) Each person who makes a passing grade on the practical and clinical examination and who is otherwise qualified shall be granted a license signed by the board. The license provided for in this section shall be in such form and wording as may be adopted by the board. The optometrist shall display the license for viewing by patients, as provided in section 12-275-117. An application for initial licensure as an optometrist shall be accompanied by a processing fee in an amount to be determined by the board pursuant to section 12-20-105.

(3) Any person denied a license under this article 275 and believing himself or herself aggrieved thereby may pursue the remedy for review as provided under article 4 of title 24 if the action is instituted within a period of sixty days after the date of denial.

(4) A person who fails to pass the examination provided for in this section may retake the examination the next time the examination is given.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1417, § 1, effective October 1.

Editor's note: This section is similar to former § 12-40-109 as it existed prior to 2019.

12-275-113. Use of prescription and nonprescription drugs - limits on prescriptions. (1) Notwithstanding section 12-280-120, a licensed optometrist may purchase, possess, and administer prescription or nonprescription drugs for examination purposes only if, after July 1, 1983, the optometrist has complied with the following minimum requirements: Successful completion, by attendance and examination, of at least fifty-five classroom hours of study in general, ocular, and clinical pharmacology that must have been completed within twenty-four months preceding the application for certification; except that, in the event that the classroom hours have been completed since 1976, only six of the classroom hours must have been completed within twenty-four months preceding the application for certification. The courses shall be offered by an institution that is accredited by a regional or professional accreditation organization recognized or approved by the Council for Higher Education Accreditation or the United States department of education or their successors.

(2) Notwithstanding section 12-280-120, a licensed optometrist may purchase, possess, administer, and prescribe prescription or nonprescription drugs for treatment on and after July 1, 1988, only if the optometrist has complied with the following minimum requirements within twenty-four months preceding the application for certification: Successful completion, by attendance and examination, of at least sixty classroom hours of study in ocular pharmacology,

clinical pharmacology, therapeutics, and anterior segment disease; and successful completion by attendance and examination of at least sixty hours of approved supervised clinical training in the examination, diagnosis, and treatment of conditions of the human eye and its appendages. The courses shall be offered by an institution that is accredited by a regional or professional accreditation organization recognized or approved by the Council for Higher Education Accreditation or the United States department of education or their successors.

(3) The optometrist shall successfully complete a course in cardiopulmonary resuscitation within twenty-four months before using prescription or nonprescription drugs and shall pass a written and clinical examination approved by the board.

(4) In addition to the requirements of section 12-275-111, each therapeutic optometrist shall meet all requirements prescribed by the board before commencing treatment of glaucoma or anterior uveitis.

(5) An optometrist is subject to the limitations on prescriptions specified in section 12-30-109.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1418, § 1, effective October 1. **L. 2021:** (5) amended, (HB 21-1276), ch. 364, p. 2400, § 12, effective July 1.

Editor's note: (1) This section is similar to former § 12-40-109.5 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-079. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see SB 19-079, chapter 86, Session Laws of San Andreas 2019.

Cross references: For the legislative declaration in HB 21-1276, see section 1 of chapter 364, Session Laws of San Andreas 2021.

12-275-114. Prescriptions - requirement to advise patients. (1) An optometrist licensed under this article 275 may advise the optometrist's patients of their option to have the symptom or purpose for which a prescription is being issued included on the prescription order.

(2) An optometrist's failure to advise a patient under subsection (1) of this section shall not be grounds for any disciplinary action against the optometrist's professional license issued under this article 275.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1419, § 1, effective October 1.

Editor's note: This section is similar to former § 12-40-109.7 as it existed prior to 2019.

12-275-115. License renewal - questionnaire - continuing education. (1) Licenses issued under this article 275 are subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2). Any person whose license has expired shall be subject to the penalties provided in this article 275 or section 12-20-202 (1).

(2) (a) The board shall establish a questionnaire to accompany the renewal form. The board shall design the questionnaire to determine if the licensee has acted in violation of or has been disciplined for actions that might be considered as violations of this article 275 or that might make the licensee unfit to practice optometry with reasonable care and safety. The board shall include on the questionnaire a question regarding whether the licensee has complied with section 12-30-111 and is in compliance with section 12-280-403 (2)(a). Failure of the applicant to answer the questionnaire accurately constitutes unprofessional conduct as specified in section 12-275-120.

(b) On and after July 1, 2024, as a condition of renewal of a license, each licensee shall attest that the licensee is in compliance with section 12-280-403 (2)(a) and that the licensee is aware of the penalties for noncompliance with that section.

(3) Effective April 1, 1993, in addition to all other requirements of this section for license renewal, the board shall require that each optometrist seeking to renew a license shall have completed twenty-four hours of board-approved continuing education. Any optometrist desiring to renew a license to practice optometry in this state shall submit to the board the information the board believes is necessary to show that the optometrist has fulfilled the continuing education requirements of this subsection (3). Implementation of this subsection (3) shall occur within existing appropriations.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1419, § 1, effective October 1; (2) amended, (SB 19-079), ch. 86, p. 319, § 23, effective October 1. **L. 2022:** (2) amended, (HB 22-1115), ch. 397, p. 2826, § 5, effective August 10.

Editor's note: (1) This section is similar to former § 12-40-113 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-079. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see SB 19-079, chapter 86, Session Laws of San Andreas 2019.

12-275-116. Change of address. Every person licensed under this article 275 shall notify the board in writing within thirty days of any change in mailing address.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1420, § 1, effective October 1.

Editor's note: This section is similar to former § 12-40-114 as it existed prior to 2019.

12-275-117. Licenses to be displayed. Every practitioner of optometry shall post and keep conspicuously displayed his or her license in the office wherein the optometrist practices. If an optometrist practices at several locations in the state, the optometrist shall display his or her license number and name in a manner that can be easily recognized by his or her patients. Each association of persons who engage in the practice of optometry under the name of a partnership, association, or any other title shall cause to be displayed and kept in a conspicuous place at the

entrance of its place of business the name of each person engaged or employed in the partnership or association in the practice of optometry.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1420, § 1, effective October 1.

Editor's note: This section is similar to former § 12-40-115 as it existed prior to 2019.

12-275-118. Records to be kept by the board. The board shall keep a record of all persons to whom licenses have been granted under this article 275. A copy of the records, certified by the board, shall be admitted in any of the courts of this state, in lieu of the originals, as prima facie evidence of the facts contained in the records. A copy of the records certified by the board of a person charged with a violation of any of the provisions of this article 275 shall be evidence that the person has not been licensed to practice optometry.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1420, § 1, effective October 1.

Editor's note: This section is similar to former § 12-40-116 as it existed prior to 2019.

12-275-119. Patient's exercise of free choice - release of patient records - rules. (1) No person shall interfere with any patient's exercise of free choice in the selection of practitioners licensed to perform examinations for refractions and visual training or corrections within the field for which their respective licenses entitle them to practice.

(2) An optometrist shall release to a patient all medical records pursuant to section 25-1-802.

(3) The optometrist shall release to the patient, upon written request, a valid, written contact lens prescription at the time the optometrist would otherwise replace a contact lens without any additional preliminary examination or fitting. The board shall promulgate rules defining the components of a valid written contact lens prescription.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1420, § 1, effective October 1.

Editor's note: This section is similar to former § 12-40-117 as it existed prior to 2019.

12-275-120. Unprofessional conduct - definitions. (1) The term "unprofessional conduct", as used in this article 275, means:

(a) Deceiving or attempting to deceive the board or its agents with reference to any proper matter under investigation by the board;

(b) Publishing or circulating, directly or indirectly, any fraudulent, false, deceitful, or misleading claims or statements relating to optometry services or ophthalmic materials or devices;

(c) Employing or offering compensation or merchandise of value to any salesperson, runner, patient, or other person as an inducement to secure his or her services or assistance in the

solicitation of patronage for the performing, rendering, supplying, or selling of optometry services or ophthalmic materials or devices;

(d) Resorting to fraud, misrepresentation, or deception in applying for, securing, renewing, or seeking reinstatement of a license or in taking any examination provided for in this article 275;

(e) The habitual or excessive use or abuse of alcohol, a habit-forming drug, or any controlled substance as defined in section 18-18-102 (5);

(f) Disobeying the lawful rule or order of the board or its officers;

(g) Practicing optometry while one's license is suspended;

(h) Practicing optometry as the partner, agent, or employee of or in joint venture or arrangement with any proprietor or with any person who does not hold a license to practice optometry within this state, except as permitted in section 12-275-124. Any licensee holding a license to practice optometry in this state may accept employment from any person, partnership, association, or corporation to examine and prescribe for the employees of the person, partnership, association, or corporation.

(i) An act or omission constituting grossly negligent optometry practice or two or more acts or omissions that fail to meet generally accepted standards of optometry practice;

(j) Sharing any professional fees with any person, partnership, or corporation that sends or refers patients to him or her, except with licensed optometrists with whom he or she may be associated in practice;

(k) Failing to:

(I) Notify the board, in a manner and within a period determined by the board, of a physical illness, physical condition, or behavioral, mental health, or substance use disorder that renders an optometrist unable to treat with reasonable skill and safety or that may endanger the health and safety of persons under the optometrist's care;

(II) Act within the limitations created by a physical illness, physical condition, or behavioral, mental health, or substance use disorder that renders an optometrist unable to treat with reasonable skill and safety or that may endanger the health and safety of persons under the optometrist's care; or

(III) Practice within the limitations created by the physical illness, physical condition, or behavioral, mental health, or substance use disorder as specified in a confidential agreement between the optometrist and the board entered into pursuant to sections 12-30-108 and 12-275-121 (5);

(l) Failing to refer a patient to the appropriate health-care practitioner when the services required by the patient are beyond the scope of competency of the optometrist or the scope of practice of optometry;

(m) Aiding or abetting, in the practice of optometry, any person not licensed to practice optometry as defined under this article 275 or any person whose license to practice is suspended;

(n) Interfering with the free choice of any person selecting a physician or other health-care practitioner;

(o) Any disciplinary action against a licensee to practice optometry in another state or country, which action shall be deemed to be prima facie evidence of unprofessional conduct if the grounds for the disciplinary action would be unprofessional conduct or otherwise constitute a violation of any provision of this article 275;

(p) Failing to notify the board of a malpractice final judgment or settlement within thirty days;

(q) Any act or omission that fails to meet generally accepted standards of care whether or not actual injury to a patient is established;

(r) Conviction of a felony or the acceptance of a plea of guilty or nolo contendere, or a plea resulting in a deferred sentence to a felony;

(s) Representing that a noncorrectable condition can be permanently corrected;

(t) Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of optometry, including falsifying or making incorrect essential entries or failing to make essential entries on patient records;

(u) Conduct that is likely to deceive or defraud the public;

(v) Negligent malpractice;

(w) (I) Violation of abuse of health insurance pursuant to section 18-13-119; or

(II) Advertising through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that the licensee will perform any act prohibited by section 18-13-119 (3);

(x) Administering, dispensing, or prescribing any prescription drug, as defined in section 12-280-103 (42), or any controlled substance, as defined in section 18-18-102 (5), other than in the course of legitimate professional practice;

(y) Engaging in any of the following activities and practices:

(I) Repeatedly ordering or performing demonstrably unnecessary laboratory tests or studies that lack clinical justification;

(II) Administering treatment that is demonstrably unnecessary and lacks clinical justification; or

(III) Ordering or performing any service, X ray, or treatment that is contrary to recognized standards of the practice of optometry, as interpreted by the board, and lacks clinical justification;

(z) Committing a fraudulent insurance act, as defined in section 10-1-128;

(aa) Failing to report to the board any optometrist known to have violated or, upon information or belief, believed to have violated any of the provisions of this article 275;

(bb) Failing to report to the board any surrender of a license to, or any adverse action taken against a licensee by another licensing agency in another state, territory, or country, any governmental agency, any law enforcement agency, or any court for acts of conduct that would constitute grounds for discipline under the provisions of this article 275;

(cc) Engaging in a sexual act with a patient while a patient-optometrist relationship exists. For the purposes of this subsection (1)(cc):

(I) "Patient-optometrist relationship" means that period of time beginning with the initial evaluation through the termination of treatment; and

(II) "Sexual act" means sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401.

(dd) Failing to provide a patient with copies of patient medical records as required by section 25-1-802;

(ee) Failing to provide a patient with a valid written contact lens prescription as required by section 12-275-119 (3);

(ff) A violation of any provision of this article 275 or an applicable provision of article 20 or 30 of this title 12;

(gg) Practicing beyond the scope of education and training prescribed by rules adopted by the board;

(hh) Failing to respond in an honest, materially responsive, and timely manner to a complaint pursuant to section 12-275-122 (1)(b).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1421, § 1, effective October 1.

Editor's note: This section is similar to former § 12-40-118 as it existed prior to 2019.

Cross references: For an exception to the provisions of subsection (1)(h), see § 6-18-303.

12-275-121. Mental and physical examination of licensees - confidential agreements to limit practice. (1) If the board has reasonable cause to believe that a licensee is unable to practice with reasonable skill and safety, the board may require the licensee to submit to a mental or physical examination by a physician or qualified health-care provider designated by the board. If the licensee refuses to undergo a mental or physical examination, unless due to circumstances beyond the licensee's control, the board may suspend the licensee's license until an examination has occurred, the results of the examination are known, and the board has made a determination of the licensee's fitness to practice. The board shall proceed with the order for examination and the determination in a timely manner.

(2) An order to a licensee pursuant to subsection (1) of this section to undergo a mental or physical examination shall contain the basis of the board's reasonable cause to believe that the licensee is unable to practice with reasonable skill and safety. For the purposes of any disciplinary proceeding authorized under this article 275, the licensee shall be deemed to have waived all objections to the admissibility of the examining physician's testimony or examination reports on the ground that they are privileged communications.

(3) The licensee may submit to the board testimony or examination reports from a physician chosen by the licensee and pertaining to any condition that the board has alleged may preclude the licensee from practicing with reasonable skill and safety. These may be considered by the board in conjunction with, but not in lieu of, testimony and examination reports of the physician designated by the board.

(4) The results of any mental or physical examination ordered by the board shall not be used as evidence in any proceeding other than one before the board and shall not be deemed public records nor made available to the public.

(5) (a) The board may enter into an agreement in accordance with section 12-30-108 with an optometrist whose practice is or may be affected by a physical illness, physical condition, or behavioral or mental health disorder that renders the optometrist unable to treat with reasonable skill and safety or that may endanger the health and safety of persons under the care of the optometrist if:

(I) The board believes that one or more limitations of the optometrist's practice would both enable the optometrist to treat with reasonable skill and safety and would protect the health and safety of persons under the care of the optometrist; and

(II) The optometrist enters into an enforceable agreement with the board to so limit the optometrist's practice.

(b) An agreement entered into pursuant to this subsection (5) is confidential and not subject to disclosure pursuant to the "San Andreas Open Records Act", part 2 of article 72 of title 24, and may include provisions for monitoring and reevaluation of the optometrist.

(c) For purposes of this subsection (5), "physical illness, physical condition, or behavioral or mental health disorder" does not include the habitual or excessive use or abuse of alcohol, a habit-forming drug, or any controlled substance as defined in section 18-18-102 (5).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1424, § 1, effective October 1.

Editor's note: This section is similar to former § 12-40-118.5 as it existed prior to 2019.

12-275-122. Discipline - procedure - professional review - immunity - reconsideration and review of action by board - rules. (1) (a) With respect to licenses issued pursuant to this article 275, the board may:

(I) Impose probation, with or without supervision, on a licensee, or take disciplinary or other action as authorized in section 12-20-404, for any reason stated in section 12-275-120 or for violating any term of probation of the board;

(II) Summarily suspend a license upon the failure of the licensee to comply with any condition of a stipulation or order imposed by the board until the licensee complies with the condition, unless compliance is beyond the control of the licensee; and

(III) Impose a fine not to exceed five thousand dollars on a licensee for a violation of this article 275 or a rule promulgated pursuant to this article 275 other than a violation related to a standard of practice. The board shall, by rule, promulgate a fining schedule with lesser amounts for first violations and increasing amounts for subsequent violations of this subsection (1)(a)(III).

(b) Upon its own motion or upon a signed complaint, an investigation may be made if there is reasonable cause to believe that an optometrist licensed by the board has committed an act of unprofessional conduct pursuant to section 12-275-120 or, while under probation, has violated the terms of the probation.

(c) If a licensee requests a hearing to dispute formal board action or if the board finds such probability great and a hearing is conducted, the hearing shall be conducted in accordance with the provisions of sections 12-20-403 and 24-4-105.

(d) The board may revoke, suspend, deny, issue, reissue, or reinstate licenses granted pursuant to this article 275 or under the previous laws of this state, and the board may take other intermediate action deemed necessary under the circumstances of each case pursuant to this section.

(2) Section 12-20-408 governs judicial review of an action of the board in refusing to grant or renew, revoking, or suspending a license, issuing a letter of admonition, or placing a licensee on probation or under supervision pursuant to subsection (1)(a)(I) of this section.

(3) The board may send a letter of admonition by certified mail to a licensee under the circumstances specified in and in accordance with section 12-20-404 (4).

(4) The board may send a confidential letter of concern to a licensee under the circumstances specified in section 12-20-404 (5).

(5) In addition to the persons specified in section 12-20-402, any member of a professional review committee authorized by the board, any member of the committee's staff, and any person acting as a witness or consultant to the committee is granted the same immunity, and is subject to the same conditions for immunity, as specified in section 12-20-402.

(6) (a) The board, on its own motion or upon application, at any time after the refusal to grant a license, the imposition of any discipline, or the ordering of probation, as provided in this section and section 12-20-404, may reconsider its prior action and grant, reinstate, or restore the license, terminate probation, or reduce the severity of its prior disciplinary action. The taking of any further action, or the holding of a hearing with respect thereto, rests in the sole discretion of the board.

(b) Upon the receipt of the application, it may be forwarded to the attorney general for such investigation as may be deemed necessary. The proceedings shall be governed by the applicable provisions governing formal hearings in disciplinary proceedings. The attorney general may present evidence bearing upon the matters in issue, and the burden shall be upon the applicant seeking reinstatement to establish the averments of the application as specified in section 24-4-105 (7). No application for reinstatement or for modification of a prior order shall be accepted unless the applicant deposits with the board all amounts unpaid under any prior order of the board.

(7) Upon dismissal of a complaint that has gone to hearing, the board shall notify the complainant that he or she may receive a copy of the investigation report and the response of the optometrist or other person alleged to have violated the act upon payment of costs of copying and mailing such information.

(8) The board may issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1425, § 1, effective October 1.

Editor's note: This section is similar to former § 12-40-119 as it existed prior to 2019.

12-275-123. Use or sale of forged or invalid certificate, degree, or license. (1) It is unlawful for any person to use or attempt to use as the person's own a diploma of an optometry school or college, or a license of another person, or a forged diploma or license, or any forged or false identification.

(2) It is unlawful:

(a) To sell or offer to sell a diploma conferring an optometry degree or a license granted pursuant to this article 275 or prior optometry practice laws;

(b) To procure a diploma or license with intent that it be used as evidence of the right to practice optometry by a person other than the one upon whom it was conferred or to whom the license was granted;

(c) With fraudulent intent to alter the diploma or license or to use or attempt to use it when it is so altered.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1429, § 1, effective October 1.

Editor's note: Subsection (1) is similar to former § 12-40-120; and subsection (2) is similar to former § 12-40-121 (1), as those sections existed prior to 2019.

12-275-124. Corporate practice prohibited - exceptions. The practice of optometry in a corporate capacity is prohibited, but this prohibition does not apply to a professional corporation formed pursuant to this article 275 or to an optometry practice carried on by a nonprofit organization operating to assist indigent persons.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1430, § 1, effective October 1.

Editor's note: This section is similar to former § 12-40-122 as it existed prior to 2019.

12-275-125. Enforcement - injunction - defense. (1) When the board has reasonable cause to believe that any person is violating any provision of this article 275 or any lawful rule issued under this article 275, it may, in addition to all actions provided for in this article 275 and without prejudice thereto, enter an order in accordance with section 12-20-405 requiring the person to desist or refrain from the violation. Additionally, the board may seek injunctive relief in accordance with section 12-20-406 to enjoin the person from engaging in or continuing the violation or from doing any act in furtherance of the violation.

(2) When legal actions are instituted against a board member or authorized personnel for acts occurring while acting in their official capacities and the actions are free of malice, fraud, or willful neglect of duty, the member or employee served shall forthwith transmit any process served upon him or her to the attorney general who shall furnish counsel and defend against the action without cost to the board member or employee.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1430, § 1, effective October 1.

Editor's note: This section is similar to former § 12-40-123 as it existed prior to 2019.

12-275-126. Unauthorized practice - penalties. Any person who practices or offers or attempts to practice optometry without an active license issued under this article 275 is subject to penalties pursuant to section 12-20-407 (1)(a).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1430, § 1, effective October 1.

Editor's note: This section is similar to former § 12-40-124 as it existed prior to 2019.

12-275-127. Professional service corporations, limited liability companies, and registered limited liability partnerships for the practice of optometry - definitions. (1) Persons licensed to practice optometry by the board may form professional service corporations for the practice of optometry under the "San Andreas Business Corporation Act", articles 101 to 117 of title 7, if the corporations are organized and operated in accordance with the provisions of this section. The articles of incorporation of the corporations shall contain provisions complying with the following requirements:

(a) The name of the corporation shall contain the words "professional company" or "professional corporation" or abbreviations thereof.

(b) The corporation shall be organized solely for the purposes of conducting the practice of optometry only through persons licensed by the board to practice optometry in the state of San Andreas.

(c) The corporation may exercise the powers and privileges conferred upon corporations by the laws of San Andreas only in furtherance of and subject to its corporate purpose.

(d) All shareholders of the corporation shall be persons who are licensed by the board to practice optometry in the state of San Andreas and who at all times own their shares in their own right. They shall be individuals who, except for illness, accident, and time spent in the armed services, on vacations, and on leaves of absence not to exceed one year, are actively engaged in the practice of optometry in the offices of the corporation.

(e) Provisions shall be made requiring any shareholder who ceases to be or for any reason is ineligible to be a shareholder to dispose of all the shareholder's shares forthwith, either to the corporation or to any person having the qualifications described in subsection (1)(d) of this section.

(f) The president shall be a shareholder and a director, and, to the extent possible, all other directors and officers shall be persons having the qualifications described in subsection (1)(d) of this section. Lay directors and officers shall not exercise any authority whatsoever over professional matters as defined in this article 275 or in the rules promulgated by the board.

(g) The articles of incorporation shall provide, and all shareholders of the corporation shall agree, that all shareholders of the corporation shall be jointly and severally liable for all acts, errors, and omissions of the employees of the corporation or that all shareholders of the corporation shall be jointly and severally liable for all acts, errors, and omissions of the employees of the corporation except during periods of time when the corporation shall maintain in good standing professional liability insurance that shall meet the following minimum standards:

(I) The insurance shall insure the corporation against liability imposed upon the corporation by law in the performance of professional services for others by those officers and employees of the corporation who are licensed by the board to practice optometry.

(II) The policies shall insure the corporation against liability imposed upon it by law for damages arising out of the acts, errors, and omissions of all nonprofessional employees.

(III) The insurance shall be in an amount for each claim of at least fifty thousand dollars multiplied by the number of persons licensed to practice optometry employed by the corporation; the policy may provide for an aggregate maximum limit of liability per year for all claims of one hundred fifty thousand dollars also multiplied by the number of persons licensed to practice optometry employed by the corporation; but no firm shall be required to carry insurance in

excess of three hundred thousand dollars for each claim with an aggregate maximum limit of liability for all claims during the year of nine hundred thousand dollars.

(IV) The policy may provide that it does not apply to: Any dishonest, fraudulent, criminal, or malicious act or omission of the insured corporation or any stockholder or employee thereof; the conduct of any business enterprise, as distinguished from the practice of optometry, in which the insured corporation under this section is not permitted to engage but that nevertheless may be owned by the insured corporation or in which the insured corporation may be a partner or that may be controlled, operated, or managed by the insured corporation in its own or in a fiduciary capacity including the ownership, maintenance, or use of any property in connection therewith, when not resulting from breach of professional duty, bodily injury to, or sickness, disease, or death of any person, or to injury to or destruction of any tangible property, including the loss of use thereof; and the policy may contain reasonable provisions with respect to policy periods, territory, claims, conditions, and other usual matters.

(2) The corporation shall do nothing that, if done by a person employed by it and licensed to practice optometry in the state of San Andreas, would violate the standards of professional conduct, as provided for in this article 275. Any violation by the corporation of this section shall be grounds for the board to terminate or suspend its right to practice optometry.

(3) Nothing in this section shall be deemed to diminish or change the obligation of each person employed by the corporation and licensed to practice optometry in this state to conduct the licensee's practice in accordance with the standards of professional conduct provided for in this article 275. Any person licensed by the board to practice optometry who by act or omission causes the corporation to act or fail to act in a way that violates the standards of professional conduct, including any provision of this section, shall be deemed personally responsible for the act or omission and shall be subject to discipline therefor.

(4) A professional service corporation may adopt a pension, cash profit sharing, deferred profit sharing, health and accident insurance, or welfare plan for all or part of its employees including lay employees, if the plan does not require or result in the sharing of specific or identifiable fees with lay employees and if any payments made to lay employees, or into any plan in behalf of lay employees, are based upon their compensation or length of service, or both, rather than the amount of fees or income received.

(5) Except as provided in this section, corporations shall not practice optometry.

(6) As used in this section, unless the context otherwise requires:

(a) "Articles of incorporation" includes operating agreements of limited liability companies and partnership agreements of registered limited liability partnerships.

(b) "Corporation" includes a limited liability company organized under the "San Andreas Limited Liability Company Act", article 80 of title 7, and a limited liability partnership registered under section 7-60-144 or 7-64-1002.

(c) "Director" and "officer" of a corporation includes a member and a manager of a limited liability company and a partner in a registered limited liability partnership.

(d) "Employees" includes employees, members, and managers of a limited liability company and employees and partners of a registered limited liability partnership.

(e) "Share" includes a member's rights in a limited liability company and a partner's rights in a registered limited liability partnership.

(f) "Shareholder" includes a member of a limited liability company and a partner in a registered limited liability partnership.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1430, § 1, effective October 1.

Editor's note: This section is similar to former § 12-40-125 as it existed prior to 2019.

12-275-128. Financial responsibility - rules. (1) Every optometrist who provides health-care services within the state of San Andreas shall establish financial responsibility as follows:

(a) By maintaining commercial professional liability insurance coverage with an insurance company authorized to do business in this state in a minimum indemnity amount of one million dollars per incident and three million dollars annual aggregate per year; or

(b) By maintaining a surety bond in a form acceptable to the commissioner of insurance in the amounts set forth in subsection (1)(a) of this section; or

(c) By depositing cash or cash equivalents as security with the commissioner of insurance in the amounts set forth in subsection (1)(a) of this section; or

(d) By providing any other security acceptable to the commissioner of insurance, which may include approved plans of self-insurance.

(2) (a) The board may, by rule, establish lesser financial responsibility standards than those required in subsection (1) of this section for classes of license holders who have an inactive license or who render limited or occasional optometry services because of administrative or other nonclinical duties, partial or complete retirement, or for other reasons that render the limits provided in subsection (1)(a) of this section unreasonable or unattainable.

(b) Nothing in this section precludes or otherwise prohibits a licensed optometrist from rendering appropriate patient care on an occasional basis when the circumstances surrounding the need for care so warrant.

(3) Each optometrist, as a condition of receiving and maintaining an active license to provide optometry services in this state, shall furnish the board evidence of compliance with subsection (1) of this section. No license shall be issued or renewed unless evidence of compliance has been furnished.

(4) Notwithstanding the amounts specified in subsection (1) of this section, if the board receives two or more reports concerning any optometrist pursuant to section 12-275-129 during any one-year period, the minimum financial responsibility requirement shall be two times the amount specified in subsection (1) of this section. However, upon motion filed by the optometrist and the presentation of sufficient evidence to the board that one or more reports involved an action or claim that did not represent any substantial failure to adhere to accepted professional standards of care, the board may reduce the additional amount to that which would be fair and conscionable.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1433, § 1, effective October 1.

Editor's note: This section is similar to former § 12-40-126 as it existed prior to 2019.

12-275-129. Judgments and settlements - reporting. Any final judgment, settlement, or arbitration award against an optometrist for malpractice shall be reported within fourteen days

by the optometrist's malpractice insurance carrier in accordance with section 10-1-125 or by the optometrist if no commercial malpractice insurance coverage is involved to the board for review, investigation, and, where appropriate, disciplinary or other action. Any optometrist who knowingly fails to report as required by this section shall be subject to a civil penalty of not more than two thousand five hundred dollars. The penalty shall be determined and collected in an action brought by the board in the district court in the city and county of Denver, which court shall have exclusive jurisdiction in such matters. All penalties collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the general fund.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1434, § 1, effective October 1.

Editor's note: This section is similar to former § 12-40-127 as it existed prior to 2019.

12-275-130. Repeal of article - review of functions. This article 275 is repealed, effective September 1, 2033. Before the repeal, the functions of the board performed pursuant to this article 275 are scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1434, § 1, effective October 1. **L. 2022:** Entire section amended, (HB 22-1233), ch. 398, p. 2829, § 1, effective August 10.

Editor's note: This section is similar to former § 12-40-128 as it existed prior to 2019.

ARTICLE 280

Pharmacists, Pharmacy Businesses,
and Pharmaceuticals

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 280 was numbered as article 42.5 of this title 12 prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

PART 1

GENERAL PROVISIONS

Editor's note: Section 12-280-104 (3) provides for the repeal of this part 1, effective September 1, 2030.

12-280-101. Public interest - rules. The practice of pharmacy is a professional practice affecting the public health, safety, and welfare and is subject to regulation and control in the public interest. It is a matter of public interest and concern that the practice of pharmacy, as

defined in this article 280, merits and receives the confidence of the public, and that only qualified persons be permitted to practice pharmacy in this state. This article 280 is liberally construed to carry out these objects and purposes. Pursuant to these standards and obligations, the state board of pharmacy may adopt rules of professional conduct in accordance with article 4 of title 24.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1434, § 1, effective October 1.

Editor's note: This section is similar to former § 12-42.5-101 as it existed prior to 2019.

12-280-102. Applicability of common provisions. Articles 1, 20, and 30 of this title 12 apply, according to their terms, to this article 280.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1435, § 1, effective October 1.

12-280-103. Definitions - rules. As used in this article 280, unless the context otherwise requires or the term is otherwise defined in another part of this article 280:

(1) "Administer" means the direct application of a drug to the body of a patient or research subject by injection, inhalation, ingestion, or any other method.

(2) "Advertise" means to publish or display information about prescription prices or drugs in any medium.

(2.5) "Animal shelter" has the meaning set forth in section 35-80-102.

(3) "Approved treatment facility" means an approved private or public treatment facility, as described in section 27-81-102 (2) and (3), that adheres to the standards set forth in section 27-81-106.

(4) "Behavioral health entity" means a behavioral health entity, as defined in section 25-27.6-102 (6), licensed pursuant to article 27.6 of title 25.

(5) "Biological product" has the same meaning as set forth in 42 U.S.C. sec. 262 (i)(1).

(6) "Board" means the state board of pharmacy created in section 12-280-104.

(7) "Bureau" means the federal drug enforcement administration, or its successor agency.

(8) "Casual sale" means a transfer, delivery, or distribution to a corporation, individual, or other entity, other than a consumer, entitled to possess prescription drugs; except that the amount of drugs transferred, delivered, or distributed in this manner by any registered prescription drug outlet or any registered other outlet shall not exceed ten percent of the total number of dosage units of drugs dispensed and distributed or originally procured in any registered other outlet on an annual basis by the outlet.

(8.5) "Certification" means a certification to practice as a pharmacy technician issued by the board in accordance with section 12-280-115.5 (2) and includes a provisional certification issued in accordance with section 12-280-115.5 (3).

(8.7) "Certifying organization" means a board-approved, nationally recognized organization that certifies pharmacy technicians.

(9) Repealed.

(9.5) "Chronic maintenance drug" means a drug that:

(a) Is not an opioid or is not a controlled substance that is prohibited from being dispensed without a prescription under the "Federal Food, Drug, and Cosmetic Act", 21 U.S.C. sec. 301 et seq., as amended; and

(b) Is prescribed to a patient to take on a recurring basis or is used as a life-saving rescue drug for a chronic condition.

(9.7) "Community mental health clinic" has the same meaning as set forth in section 25-27.6-102 (9).

(10) (a) "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device:

(I) As the result of a practitioner's prescription drug order, chart order, or initiative, based on the relationship between the practitioner, patient, and pharmacist in the course of professional practice; or

(II) For the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale or dispensing.

(b) "Compounding" also includes the preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns.

(11) "Controlled substance" shall have the same meaning as in section 18-18-102 (5).

(12) "Delivery" means the actual, constructive, or attempted transfer of a drug or device from one person to another, whether or not for consideration.

(13) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, or similar or related article that is required under federal law to bear the label "**Caution: Federal law requires dispensing by or on the order of a physician.**" "Device" also includes any component part of, or accessory or attachment to, any such article, whether or not the component part, accessory, or attachment is separately so labeled.

(14) "Dispense" means to interpret, evaluate, and implement a prescription drug order or chart order, including the preparation of a drug or device for a patient or patient's agent in a suitable container appropriately labeled for subsequent administration to or use by a patient.

(15) "Distribution" means the transfer of a drug or device other than by administering or dispensing.

(15.5) "DQSA" means the federal "Drug Quality and Security Act", Pub.L. 113-54, as amended.

(16) (a) "Drug" means:

(I) Substances recognized as drugs in the official compendia;

(II) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals;

(III) Substances, other than food, intended to affect the structure or any function of the body of individuals or animals; and

(IV) Substances intended for use as a component of any substance specified in subsection (16)(a)(I), (16)(a)(II), or (16)(a)(III) of this section.

(b) "Drug" does not include devices or their components, parts, or accessories.

(17) "FDA" means the federal food and drug administration.

(18) "Generic drug type" means the chemical or generic name, as determined by the United States Adopted Names (USAN) Council and accepted by the FDA, of those drug

products having exactly the same active chemical ingredients in exactly the same strength and quantity.

(19) "Hospital" means a general hospital or specialty hospital having a license or certificate of compliance issued by the department of public health and environment.

(20) "Hospital satellite pharmacy" means a satellite that registers pursuant to section 12-280-119 (10) for the purpose of administration of drugs to patients while being treated in the facility.

(21) "Interchangeable", in reference to a biological product, means:

(a) "Interchangeable" or "interchangeability", as determined by the FDA pursuant to 42 U.S.C. sec. 262 (k)(4); or

(b) That the FDA has deemed the biological product therapeutically equivalent to another biological product, as set forth in the latest edition or supplement of the FDA Approved Drug Products with Therapeutic Equivalence Evaluations, also referred to as the "Orange Book".

(22) "Intern" means a person who is:

(a) (I) Enrolled in a professional degree program of a school or college of pharmacy that has been approved by the board;

(II) Currently licensed by the board to engage in the practice of pharmacy; and

(III) Satisfactorily progressing toward meeting the requirements for licensure as a pharmacist;

(b) A graduate of an approved professional degree program of a school or college of pharmacy or a graduate who has established education equivalency by obtaining a board-approved foreign pharmacy graduate certification and who is currently licensed by the board for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist; or

(c) A qualified applicant awaiting examination for licensure as a pharmacist or meeting board requirements for licensure.

(22.5) "Inventory function" means any nondispensing-related activity that is related to the management of inventory and that may be performed by nonlicensed personnel under the supervision of a licensed pharmacist.

(23) "Labeling" means the process of preparing and affixing a label to any drug container, exclusive, however, of the labeling by a manufacturer, packer, or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label shall include all information required by federal and state law or regulation.

(24) "Location" means the physical confines of an individual building or at the same address.

(25) "Long-term care facility" means a nursing facility, as defined in section 25.5-4-103 (14), that is licensed pursuant to section 25-1.5-103.

(26) "Manufacture" means to cultivate, grow, or prepare by other process drugs for sale to wholesalers or other persons entitled to purchase drugs other than the ultimate user, but "manufacture" does not include the compounding and dispensing of a prescription drug pursuant to a prescription order.

(27) "Manufacturer" or "manufacturing drug outlet" means a person who manufactures drugs and includes a resident 503B outsourcing facility.

(27.5) "Medications for opioid use disorder" or "MOUD" means treatment for an opioid use disorder using medications approved by the FDA for that purpose and prescribed, dispensed, or administered in accordance with national, evidence-based published guidance.

(28) "Nonprescription drug" means a drug that may be sold without a prescription and that is labeled for use by the consumer in accordance with the requirements of the law and rules of this state and the federal government.

(28.5) "Nonresident 503B outsourcing facility" means a facility that is registered by the FDA, that is located outside the state, and that distributes compounded drugs into the state without a prescription order.

(29) "Nuclear pharmacy" means a specialized pharmacy that deals with the preparation and delivery of radioactive material as defined in section 25-11-101.

(30) "Official compendia" means the official United States pharmacopeia, national formulary, homeopathic pharmacopoeia of the United States, or any supplements thereto.

(31) "Order" means:

(a) A prescription order that is any order, other than a chart order, authorizing the dispensing of a single drug or device that is written, mechanically produced, computer generated and signed by the practitioner, transmitted electronically or by facsimile, or produced by other means of communication by a practitioner to a licensed pharmacy or pharmacist and that includes the name or identification of the patient, the date, the symptom or purpose for which the drug is being prescribed, if included by the practitioner at the patient's authorization, and sufficient information for compounding, dispensing, and labeling; or

(b) A chart order, which is an order for inpatient drugs or medications that are to be dispensed by a pharmacist, or by a pharmacy intern under the direct supervision of a pharmacist, and administered by an authorized person only during the patient's stay in a hospital, medical clinic operated by a hospital, ambulatory surgical center, hospice, or long-term care facility. The chart order shall contain the name of the patient and the medicine ordered and the directions the practitioner may prescribe concerning strength, dosage, frequency, and route of administration.

(32) "Other outlet" means:

(a) A hospital that does not operate a registered pharmacy, a rural health clinic, a federally qualified health center, as defined in the federal "Social Security Act", 42 U.S.C. sec. 1395x (aa)(4), a family planning clinic, an acute treatment unit licensed by the department of public health and environment, a school, a jail, a county or district public health agency, a community health clinic, a community mental health clinic, a behavioral health entity, an approved treatment facility, a university, or a college that:

(I) Has facilities in this state registered pursuant to this article 280; and

(II) Engages in the compounding, dispensing, and delivery of drugs or devices; or

(b) An ambulatory surgical center, a hospice, or a convalescent center, each of which is licensed pursuant to part 1 of article 3 of title 25, or a medical clinic operated by a hospital, each of which:

(I) Has facilities in this state registered pursuant to this article 280; and

(II) Engages in the compounding, dispensing, and delivery of drugs or devices for administration to patients while being treated in the facility.

(c) Repealed.

(33) "Patient counseling" means the oral communication by a pharmacist or intern of information to the patient or caregiver in order to improve therapy by ensuring proper use of drugs and devices.

(34) Repealed.

(35) "Pharmacist" means an individual licensed by this state to engage in the practice of pharmacy.

(35.5) "Pharmacist care services" means patient care activities provided by a pharmacist, with or without dispensing a drug, that are intended to achieve outcomes related to curing or preventing disease, eliminating or reducing a patient's symptoms, or arresting or slowing the process of a disease. "Pharmacist care services" includes efforts to prevent, detect, and resolve medication-related problems.

(36) "Pharmacist manager" means an individual, licensed in this state as a pharmacist, who has direct control of the pharmaceutical affairs of a prescription drug outlet and who, except as provided in section 12-280-118 (1)(a), is not the manager of any other prescription drug outlet.

(37) Repealed.

(38) "Pharmacy technician" or "certificant" means a person who is certified by the board to practice as a pharmacy technician and includes a person issued a provisional certification pursuant to section 12-280-115.5 (3).

(38.5) (a) "Practice as a pharmacy technician" means engaging in any of the following activities involved in the practice of pharmacy, under the supervision and delegation of a supervising pharmacist:

(I) Receiving and initially inputting new written, facsimile, or electronic orders;

(II) Preparing, mixing, assembling, packaging, labeling, or delivering a drug or device;

(III) Properly and safely storing drugs or devices;

(IV) Maintaining proper records for drugs and devices;

(V) Transferring prescriptions;

(VI) Gathering, documenting, and maintaining proper clinical and nonclinical information from patients;

(VII) Replenishing automated dispensing devices without the need for pharmacist verification as long as the pharmacy technician uses bar code technology that checks the accuracy of the medication or a second pharmacy technician performs the verification;

(VIII) Performing point-of-care testing and patient care technical tasks as specifically trained for and delegated by a supervising pharmacist;

(IX) Other activities as authorized and defined by the board by rule;

(X) Redispensing a prescription drug pursuant to section 12-280-141 (9)(b) and (9)(c); and

(XI) Requesting refill authorization from the prescriber or prescriber's agent and receiving clarifying prescription information from the prescriber or prescriber's agent.

(b) "Practice as a pharmacy technician" does not include activities or services described in subsection (38.5)(a) of this section that are performed by employees or personnel of a practitioner dispensing drugs to patients pursuant to section 12-280-120 (6) or of a registered other outlet, which practitioner or other outlet does not store, compound, dispense, or deliver controlled substances.

(39) "Practice of pharmacy" means:

(a) The interpretation, evaluation, implementation, and dispensing of orders; participation in drug and device selection, drug administration, drug regimen reviews, and drug or drug-related research; the provision of patient counseling; and the provision of those acts or services necessary to provide pharmacist care services in all areas of patient care;

(b) (I) The preparation, mixing, assembling, packaging, labeling, or delivery of a drug or device;

(II) Proper and safe storage of drugs or devices; and

(III) The maintenance of proper records for the drugs and devices;

(c) The provision of a therapeutic interchange selection or a therapeutically equivalent selection to a patient if, during the patient's stay at a nursing care facility or a long-term acute care hospital licensed under part 1 of article 3 of title 25, the selection has been approved for the patient:

(I) In accordance with written guidelines and procedures for making therapeutic interchange or therapeutically equivalent selections, as developed by a quality assessment and assurance committee that includes a pharmacist licensed under this article 280 and is formed by the nursing care facility or the long-term acute care hospital in accordance with 42 CFR 483.75; and

(II) By one of the following health-care providers:

(A) A physician licensed under article 240 of this title 12;

(B) A physician assistant licensed under section 12-240-113; or

(C) An advanced practice registered nurse prescriber licensed as a professional nurse under section 12-255-110, registered as an advanced practice registered nurse under section 12-255-111, and authorized to prescribe controlled substances or prescription drugs pursuant to section 12-255-112;

(d) The dispensing of chronic maintenance drugs pursuant to section 12-280-125.5 and board rules adopted in accordance with that section;

(e) Pursuant to a standing order or to a statewide drug therapy protocol developed pursuant to section 12-280-125.7, the prescribing and dispensing of post-exposure prophylaxis, as defined in section 12-280-125.7 (1)(d), for nonoccupational exposure to HIV infection and preexposure prophylaxis, as defined in section 12-280-125.7 (1)(e), and the ordering of lab tests in conjunction with prescribing or dispensing the drugs;

(f) Providing care to patients pursuant to a collaborative pharmacy practice agreement as defined in section 12-280-601;

(g) Exercising independent prescriptive authority:

(I) As authorized pursuant to section 25.5-5-322, only with regard to over-the-counter medications prescribed to recipients under the "San Andreas Medical Assistance Act", articles 4 to 6 of title 25.5;

(II) In accordance with a collaborative pharmacy practice agreement as defined in section 12-280-601 (1)(b);

(III) As authorized pursuant to sections 12-30-110 and 12-280-123 (3) regarding opioid antagonists;

(IV) For drugs that are not controlled substances, drug categories, or devices that are prescribed in accordance with the product's FDA-approved labeling and to patients who are at least twelve years of age and that are limited to conditions that:

(A) Do not require a new diagnosis;

(B) Are minor and generally self-limiting; or

(C) Have a test that is used to guide diagnosis or clinical decision-making and is waived under the federal "Clinical Laboratory Improvement Amendments of 1988", Pub.L. 100-578, as amended; or

(V) For any FDA-approved product indicated for opioid use disorder in accordance with federal law and regulations, including medications for opioid use disorder, if authorized pursuant to part 6 of this article 280;

(h) Ordering and evaluating laboratory tests as related to medication therapy;

(i) Performing limited physical assessments commensurate with education and training;

(j) Performing other tasks delegated by a licensed physician;

(k) Providing treatment that is based on national, evidence-based published guidance; and

(l) Dispensing or administering any FDA-approved product for opioid use disorder in accordance with federal law and regulations, including medications for opioid use disorder.

(40) "Practitioner" means a person authorized by law to prescribe any drug or device, acting within the scope of the authority, including a pharmacist who is participating within the parameters of a statewide drug therapy protocol pursuant to a collaborative pharmacy practice agreement as defined in section 12-280-601 (1)(b), prescribing over-the-counter medications pursuant to section 25.5-5-322, or prescribing an opioid antagonist pursuant to sections 12-30-110 and 12-280-123 (3).

(41) "Prescription" means the finished product of the dispensing of a prescription order in an appropriately labeled and suitable container.

(42) "Prescription drug" means a drug that:

(a) Is required by any applicable federal or state law or rule to be dispensed only pursuant to an order;

(b) Is restricted by any applicable federal or state law or rule to use by practitioners only; or

(c) Prior to being dispensed or delivered, is required under federal law to be labeled with one of the following statements:

(I) "**Rx only**"; or

(II) "**Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian.**"

(43) "Prescription drug outlet" or "pharmacy" means any pharmacy outlet registered pursuant to this article 280 where prescriptions are compounded and dispensed. "Prescription drug outlet" includes, without limitation, a specialized prescription drug outlet registered pursuant to section 12-280-119 (11) and a telepharmacy outlet.

(44) "Refill" means the compounding and dispensing of any drug pursuant to a previously executed order.

(45) "Repackage" means repackaging or otherwise changing the container, wrapper, or labeling to further the distribution of a prescription drug, excluding repackaging or labeling completed by the pharmacist responsible for dispensing product to the patient.

(46) "Repackager" means a person who repackages prescription drugs.

(46.5) "Resident 503B outsourcing facility" means a facility that is registered by the FDA, that is located in the state, and that distributes compounded drugs within the state.

(47) "Sample" means any prescription drug given free of charge to any practitioner for any reason except for a bona fide research program.

(48) "Satellite" means an area outside the prescription drug outlet where pharmacist care services are provided and that is in the same location.

(49) "Supervision" means that a licensed pharmacist is on the location and readily available to consult with and assist certificants practicing as pharmacy technicians as described in subsection (38.5) of this section or ancillary personnel performing tasks at the direction of the licensed pharmacist, excluding tasks described in subsection (38.5)(a) of this section but which tasks may include delivery and proper and safe storage of drugs or devices. If the person is a pharmacy technician located at a registered telepharmacy outlet, the licensed pharmacist need not be physically present at the telepharmacy outlet as long as the licensed pharmacist is connected to the telepharmacy outlet via computer link, video link, and audio link, or via other telecommunication equipment of equivalent functionality, and is readily available to consult with and assist the pharmacy technician in performing tasks described in subsection (38.5)(a) of this section.

(50) (a) "Telepharmacy outlet" means a remote pharmacy site that:

(I) Is registered as a prescription drug outlet or pharmacy under this article 280;

(II) Repealed.

(III) Is connected via computer link, video link, and audio link, or via other functionally equivalent telecommunication equipment, with a central pharmacy located in this state that is registered under this article 280; and

(IV) Has a pharmacy technician on site who, under the remote supervision of a licensed pharmacist located at the central pharmacy in this state, performs the tasks described in subsection (38.5)(a) of this section.

(b) (Deleted by amendment, L. 2022.)

(c) As used in this subsection (50):

(I) Repealed.

(II) "Central pharmacy" means a registered pharmacy outlet responsible for overseeing the operation of a telepharmacy outlet.

(51) "Therapeutic interchange" means the substitution of one drug for another drug with similar therapeutic effects.

(52) "Therapeutically equivalent" or "equivalent" means those compounds containing the identical active chemical ingredients of identical strength, quantity, and dosage form and of the same generic drug type, which, when administered in the same amounts, will provide the same therapeutic effect as evidenced by the control of a symptom or disease.

(52.5) "Third-party logistics provider" means a person that contracts with a manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer but does not take title to a prescription drug or have general responsibility to direct the prescription drug's sale or disposition.

(53) "Ultimate user" means a person who lawfully possesses a prescription drug for his or her own use, for the use of a member of the person's household, or for use in administering to an animal owned by the person or a member of his or her household.

(54) (a) "Wholesale distribution" means distribution of prescription drugs to persons or entities other than a consumer or patient.

(b) "Wholesale distribution" does not include:

(I) Intracompany sales or transfers of prescription drugs, including a transaction or transfer between a division, subsidiary, parent, or affiliated or related company under common ownership or control of an entity;

(II) The sale, purchase, distribution, trade, or transfer of a prescription drug or offer to sell, purchase, distribute, trade, or transfer a prescription drug for emergency medical reasons or during a state or national declaration of emergency;

(III) The sale or transfer of a prescription drug that is not compounded or prepackaged by the selling or transferring pharmacy, except as allowed pursuant to section 12-280-120 (15)(b), for medical reasons by an in-state or unregistered nonresident pharmacy to a separate in-state pharmacy under common ownership with the selling or transferring in-state or unregistered nonresident pharmacy to alleviate a temporary shortage;

(IV) The distribution of prescription drug samples by a manufacturer's representative;

(V) Drug returns, when conducted by a hospital, health-care entity, or charitable institution in accordance with 21 CFR 203.23;

(VI) The sale of minimal quantities of prescription drugs by retail pharmacies to licensed practitioners for office use;

(VII) A retail pharmacy's delivery of prescription drugs to a patient or patient's agent pursuant to the lawful order of a licensed practitioner;

(VIII) The sale, transfer, merger, or consolidation of all or part of the business of a pharmacy or pharmacies from or with another pharmacy or pharmacies, whether accomplished as a purchase and sale of stock or business assets;

(IX) Repealed.

(X) The delivery of, or offer to deliver, a prescription drug by a common carrier solely in the common carrier's usual course of business of transporting prescription drugs where the common carrier does not store, warehouse, or take legal ownership of the prescription drug;

(XI) The sale or transfer from a retail pharmacy of expired, damaged, returned, or recalled prescription drugs to the original manufacturer or to a third-party returns processor;

(XII) Repealed.

(XIII) The transfer of prescription drugs within San Andreas purchased with public funds by the department of public health and environment, created in section 25-1-102, or a district or county public health agency, created pursuant to section 25-1-506, and procured by a physician licensed in San Andreas who is either the executive director or the chief medical officer appointed pursuant to section 25-1-105 or a public health director or medical officer of a county or district public health agency selected pursuant to section 25-1-508 (5)(c)(I). The transfers may only be made to the department of public health and environment pursuant to the San Andreas medical license of the executive director or chief medical officer, a district or county public health agency pursuant to the San Andreas medical license of the public health director or medical officer, or a physician licensed in San Andreas.

(XIV) The distribution of naloxone;

(XV) The distribution, donation, or sale by a manufacturer or wholesaler of a stock supply of epinephrine auto-injectors to public schools or nonpublic schools for emergency use by designated school personnel in accordance with the requirements of section 22-1-119.5, or to other entities for emergency use in accordance with the requirements of article 47 of title 25;

(XVI) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization described in section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended, to a nonprofit affiliate of the organization to the extent otherwise permitted by law.

(55) "Wholesaler" means a person engaged in the wholesale distribution of prescription drugs to persons, other than consumers, that are authorized by law to possess prescription drugs.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1435, § 1, effective October 1; (8.5), (8.7), and (38.5) added and (38), (49), and (50)(a)(IV) amended, (HB 19-1242), ch. 434, p. 3747, § 1, effective October 1; (9.5) and (39)(d) added and (39)(b)(III) and (39)(c)(II)(C) amended, (HB 19-1077), ch. 40, p. 137, § 4, effective October 1; IP(32)(b) amended, (HB 19-1109), ch. 23, p. 80, § 2, effective October 1. **L. 2020:** (7) amended, (HB 20-1402), ch. 216, p. 1045, § 22, effective June 30; (39)(c)(II)(C) amended, (HB 20-1216), ch. 190, p. 881, § 30, effective July 1; (39)(c)(II)(C) and (39)(d) amended and (39)(e) added, (HB 20-1061), ch. 281, p. 1375, § 4, effective July 13; (8) amended, (HB 20-1050), ch. 76, p. 313, § 1, effective September 14; IP(32)(a) amended, (SB 20-136), ch. 70, p. 287, § 20, effective September 14. **L. 2021:** (3), (4), (27), IP(32)(a), (38.5)(a)(V), (38.5)(a)(VI), (39)(a), (39)(d), (40), (43), (48), (54)(b)(III), (54)(b)(XI), and (55) amended, (9), (34), (37), (54)(b)(IX), and (54)(b)(XII) repealed, and (9.7), (15.5), (28.5), (35.5), (38.5)(a)(VII), (38.5)(a)(VIII), (39)(f), (39)(g), (39)(h), (39)(i), (39)(j), (39)(k), (46.5), (52.5), and (54)(b)(XVI) added, (SB 21-094), ch. 314, p. 1924, § 3, effective September 1. **L. 2022:** (2.5) added, (HB 22-1235), ch. 442, p. 3118, § 22, effective August 10; (32)(a)(II), (32)(b)(II), (36), (43), and (50) amended and (32)(c) repealed, (SB 22-173), ch. 484, p. 3517, § 1, effective August 10. **L. 2023:** (38.5)(a)(VII) and (38.5)(a)(VIII) amended and (38.5)(a)(IX) added, (SB 23-162), ch. 148, p. 629, § 1, effective August 7; (39)(c)(II)(B) amended, (SB 23-083), ch. 114, p. 413, § 6, effective August 7. **L. 2024:** (39)(g)(III) and (40) amended, (HB 24-1037), ch. 458, p. 3168, § 13, effective June 6; (22.5), (38.5)(a)(X), and (38.5)(a)(XI) added, (38.5)(a)(VIII) amended, and (50)(a)(II) and (50)(c)(I) repealed, (SB 24-209), ch. 456, p. 3154, § 1, effective July 1; (27.5), (39)(g)(V), and (39)(l) added, (39)(g)(III), (39)(g)(IV)(C), (39)(j), and (39)(k) amended, (HB 24-1045), ch. 470, p. 3279, § 10, effective August 7.

Editor's note: (1) This section is similar to former § 12-42.5-102 as it existed prior to 2019.

(2) (a) Before its relocation in 2019, this section was amended in HB 19-1077. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from March 21, 2019, to October 1, 2019, see HB 19-1077, chapter 40, Session Laws of San Andreas 2019.

(b) Before its relocation in 2019, this section was amended in HB 19-1109. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see HB 19-1109, chapter 23, Session Laws of San Andreas 2019.

(3) Amendments to subsection (39)(c)(II)(C) by HB 20-1061 and HB 20-1216 were harmonized.

(4) Amendments to subsection (39)(g)(III) by HB 24-1037 and HB 24-1045 were harmonized.

(5) Section 4 of chapter 456 (SB 24-209), Session Laws of San Andreas 2024, provides that the act changing this section applies to prescription drugs dispensed on or after July 1, 2024.

Cross references: For the legislative declaration in HB 20-1216, see section 1 of chapter 190, Session Laws of San Andreas 2020. For the legislative declaration in SB 20-136, see section 1 of chapter 70, Session Laws of San Andreas 2020.

12-280-104. State board of pharmacy - creation - subject to review - repeal of parts. (1) The responsibility for enforcement of this article 280 is vested in the state board of pharmacy, which is hereby created. The board has all of the duties, powers, and authority specifically granted by and necessary to the enforcement of this article 280, as well as other duties, powers, and authority as may be granted by statute from time to time. Except as otherwise provided to the contrary, the board shall exercise all its duties, powers, and authority in accordance with the "State Administrative Procedure Act", article 4 of title 24.

(2) The board is a **type 1** entity, as defined in section 24-1-105, and exercises its powers and performs its duties and functions specified by this article 280 under the department and the executive director.

(3) Parts 1 to 3, 5, and 6 of this article 280 are repealed, effective September 1, 2030. Before the repeal, the board and the regulation of the practice of pharmacy pursuant to parts 1 to 3, 5, and 6 of this article 280 are scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1444, § 1, effective October 1; (3) amended, (HB 19-1242), ch. 434, p. 3748, § 2, effective October 1. **L. 2021:** (3) amended, (SB 21-094), ch. 314, p. 1923, § 1, effective September 1. **L. 2022:** (2) amended, (SB 22-162), ch. 469, p. 3397, § 134, effective August 10.

Editor's note: This section is similar to former § 12-42.5-103 as it existed prior to 2019.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of San Andreas 2022.

12-280-105. Membership of board - removal - compensation - meetings. (1) (a) (I) The board is composed of five licensed pharmacists, each having at least five years' experience in this state and actively engaged in the practice of pharmacy in this state, and two nonpharmacists who have no financial interest in the practice of pharmacy.

(II) Of the licensed pharmacist members of the board, one must be engaged in practice in a hospital setting, one must be engaged in practice in a chain pharmacy, and one must be engaged in practice in an independent pharmacy.

(b) (I) The governor shall make all appointments to the board in accordance with this section.

(II) Repealed.

(c) For purposes of achieving a balance in the membership on the board, the governor shall consider:

(I) Whether the appointee's home is in:

(A) An urban or rural location; and

(B) An area already represented geographically by another appointee on the board; and

(II) The type of practice of the appointee so that various types of practices are represented on the board and so that the licensed pharmacist members of the board satisfy the requirements of subsection (1)(a)(II) of this section.

(d) (I) The term of office of each member is four years.

(II) In the case of an appointment to fill a vacancy, the appointee shall complete the unexpired term of the former board member.

(III) No member of the board may serve more than two consecutive full terms.

(e) No more than four members of the board shall be members of the same major political party.

(f) The governor shall appoint the pharmacist members in a manner to ensure that the term of one member expires July 1 of each year.

(2) The governor may remove any board member for misconduct, incompetence, or neglect of duty.

(3) Each member of the board shall receive the compensation provided for in section 12-20-103 (6).

(4) The board shall hold meetings at least once every four months at the times and places fixed by the board. At one meeting, the board shall elect a president and a vice-president. A majority of the members of the board constitutes a quorum for the conduct of business, and, except as otherwise provided in this part 1, all actions of the board must be by a majority of a quorum. The board shall give full and timely notice of all meetings of the board pursuant to any requirements of state laws. All board meetings and hearings are open to the public; except that the board may conduct any portion of its meetings in executive session closed to the public, as may be permitted by law.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1445, § 1, effective October 1. **L. 2021:** (1)(a), (1)(b), and (1)(c)(II) amended, (SB 21-094), ch. 314, p. 1928, § 4, effective June 24.

Editor's note: (1) This section is similar to former § 12-42.5-104 as it existed prior to 2019.

(2) Subection (1)(b)(II)(B) provided for the repeal of subsection (1)(b)(II), effective December 31, 2022. (See L. 2021, p. 1928.)

12-280-106. Veterinary pharmaceutical advisory committee - creation - appointments - rules - repeal. (1) (a) (I) There is created in the department the veterinary pharmaceutical advisory committee comprised of three members, each appointed by the state veterinarian who serves under the commissioner of agriculture pursuant to section 35-50-104 as follows:

(A) One member who is a licensed veterinarian who predominantly works on large animals, having at least five years' experience in this state, in good standing, and actively engaged in the practice of veterinary medicine;

(B) One member who is either a wholesaler registered pursuant to part 3 of this article 280 engaged in the distribution of animal drugs, having at least five years' experience in this state, in good standing, and actively engaged in the practice of wholesale pharmacy or a licensed veterinarian, having at least five years' experience in this state, in good standing, and actively

engaged in the practice of veterinary medicine, but who is not both a wholesaler and a veterinarian; and

(C) One member who has a background in agriculture and who is not a pharmacist, pharmaceutical wholesaler, or veterinarian.

(II) The state veterinarian shall choose a person who does not do business along the front range for at least one of the professional appointments on the advisory committee.

(b) The members of the advisory committee serve three-year terms; except that the state veterinarian shall appoint one of the initial members of the advisory committee for a two-year term. If there is a vacancy on the advisory committee, the state veterinarian shall appoint a successor to fill the unexpired portion of the member's term.

(c) (I) The advisory committee shall elect a member to serve as chair of the advisory committee. The advisory committee shall meet as required by the board in accordance with subsection (2) of this section.

(II) Members of the advisory committee serve without compensation or reimbursement of expenses.

(III) A member of the advisory committee shall not perform an official act that:

(A) May provide a direct economic benefit to a business or other undertaking in which the member has a direct or substantial financial interest; or

(B) Involves a person with whom the member has engaged in a substantial number of business transactions.

(d) The department shall provide staff assistance to the advisory committee.

(2) (a) Unless a matter presented to the board constitutes an emergency requiring prompt resolution, the board shall refer the following matters that concern veterinary pharmaceuticals to the advisory committee for a recommendation on how the board should proceed on the matter:

(I) Whether and to what extent action, if any, should be taken on an investigation into or complaint of an alleged violation of this article 280, including whether to:

(A) Suspend or revoke a license or registration;

(B) Impose a fine against a licensee or registrant, whether the violation is egregious, and the amount of any fine recommended;

(C) Seek a restraining order or injunction in civil court against a person; or

(D) Pursue other disciplinary action against a licensee, registrant, or other person;

(II) Review of license and registration applications and renewal, reactivation, and reinstatement applications; and

(III) Promulgation of rules.

(b) Upon being referred a matter by the board, the advisory committee shall meet, in person or by teleconference, as soon as practicable to review the matter. The board shall share all documents, recordings, and other materials that are relevant to the matter with the advisory committee for the advisory committee's review of the matter. The advisory committee shall treat all shared materials as confidential. The advisory committee shall provide the board a written recommendation on how the board should proceed on the matter referred, setting forth its findings and conclusions. At the advisory committee's discretion, the advisory committee may also present its recommendations to the board in person or by teleconference.

(c) The board shall adopt the advisory committee's recommendation on a referred matter unless the board determines that there exists material and substantial evidence or information

related to the matter that warrants a resolution of the matter that is distinct from the advisory committee's recommendation.

(3) The board, in consultation with the state veterinarian, may promulgate rules to implement this section.

(4) This section is repealed, effective September 1, 2026. Before the repeal, the advisory committee is scheduled for review in accordance with section 2-3-1203.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1446, § 1, effective October 1; **L. 2021:** (1)(a)(I)(B) and (2)(c) amended, (SB 21-094), ch. 314, p. 1929, § 5, effective September 1.

Editor's note: This section is similar to former § 12-42.5-104.5 as it existed prior to 2019.

12-280-107. Rules. (1) The board shall make, adopt, amend, or repeal rules in accordance with article 4 of title 24 and section 12-20-204 that the board deems necessary for the proper administration and enforcement of the responsibilities and duties delegated to the board by this article 280, including those relating to nuclear pharmacies.

(2) On or before January 1, 2020, the board shall adopt or amend rules as necessary to permit the dispensing of an opiate antagonist in accordance with sections 12-30-110 and 12-280-123 (3).

(3) The board may adopt rules to specify additional criteria necessary to facilitate the operation of telepharmacy outlets. The board's additional rules for a telepharmacy outlet are limited to rules concerning the following:

(a) Application requirements;

(b) Structural and equipment requirements;

(c) Staffing and training requirements;

(d) Pharmacist manager visitation requirements;

(e) Inventory record-keeping and storage requirements;

(f) Establishing policies and procedures relating to telepharmacy operations; and

(g) The number of telepharmacy outlets that may be operated by a central pharmacy.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1448, § 1, effective October 1; (2) amended, (SB 19-227), ch. 273, p. 2584, § 15, effective October 1. **L. 2022:** (3) added, (SB 22-173), ch. 484, p. 3518, § 2, effective August 10.

Editor's note: (1) This section is similar to former § 12-42.5-105 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-227. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from May 23, 2019, to October 1, 2019, see SB 19-227, chapter 273, Session Laws of San Andreas 2019.

12-280-108. Powers and duties - rules. (1) The board shall:

(a) (I) Inspect, or direct inspectors who are licensed pharmacists to inspect, all outlets and investigate violations of this article 280.

(II) The board's authority under this subsection (1)(a) to inspect all outlets includes the authority, after conducting a risk-based assessment, as defined by the board by rule, to inspect an out-of-state pharmacy, a nonresident 503B outsourcing facility, or an out-of-state wholesaler.

(b) Prescribe forms and receive applications for licensure, certification, and registration and grant, renew, reactivate, and reinstate licenses, certifications, and registrations;

(c) Deny, suspend, or revoke licenses, certifications, or registrations;

(d) Apply to the courts for and obtain restraining orders and injunctions in accordance with section 12-20-406 to enjoin violations of the laws that the board is empowered to enforce;

(e) Administer examinations to, and determine the qualifications and fitness of, applicants for licensure, certification, or registration;

(f) Keep a record of:

(I) All licenses, certifications, registrations, and license, certification, and registration renewals, reactivations, and reinstatements for a reasonable period;

(II) All suspensions, revocations, and any other disciplinary actions; and

(III) Its own proceedings;

(g) Collect all fees prescribed by this article 280 and section 12-20-105;

(h) Fine registrants when consistent with the provisions of this article 280 and the rules adopted pursuant to this article 280;

(i) Conduct investigations, hold hearings, and take evidence in all matters relating to the exercise and performance of the powers and duties of the board in accordance with section 12-20-403;

(j) Review and approve or reject applications for participation in the pharmacy peer health assistance program pursuant to part 2 of this article 280 and perform any other functions that were performed by the rehabilitation evaluation committee prior to its repeal;

(k) Send a quarterly electronic newsletter to all licensees by e-mail that details changes in state law, including changes outside of this article 280, that affect or are pertinent to the practice of pharmacy.

(2) The board has other duties, powers, and authority as may be necessary to enforce this article 280 and the rules adopted pursuant to this article 280.

(3) The board may:

(a) Adopt a seal to be used only in the manner the board prescribes;

(b) Promulgate rules governing the compounding of pharmaceutical products, which rules must address the following:

(I) Training and qualifications;

(II) Quality control;

(III) Internal operating procedures;

(IV) Procurement of compounding materials;

(V) Formulation, documentation, and testing requirements;

(VI) Equipment standards;

(VII) Facility standards; and

(VIII) A recall system.

(4) (a) (I) Whenever a duly authorized agent of the board finds or has probable cause to believe that, in any registered outlet, any drug, nonprescription drug, or device is adulterated or

misbranded within the meaning of the "San Andreas Food and Drug Act", part 4 of article 5 of title 25, the agent shall affix to the article a tag or other appropriate marking giving notice:

(A) That the article is, or is suspected of being, adulterated or misbranded;

(B) That the article has been detained or embargoed; and

(C) Warning all persons not to remove or dispose of the article by sale or otherwise until the board, its agent, or the court gives provision for removal or disposal.

(II) No person shall remove or dispose of an embargoed article by sale or otherwise without the permission of the board or its agent or, after summary proceedings have been instituted, without permission from the court.

(b) If the board or the court removes the embargo, neither the board nor the state is liable for damages because of the embargo if the court finds that there was probable cause for the embargo.

(c) When an agent finds that an article detained or embargoed under subsection (4)(a) of this section is adulterated or misbranded, the agent shall petition the judge of the district court in whose jurisdiction the article is detained or embargoed for an order for condemnation of the article. When the agent finds that an article so detained or embargoed is not adulterated or misbranded, he or she shall remove the tag or other marking.

(d) (I) If the court finds that a detained or embargoed article is adulterated or misbranded, except as provided in subsection (4)(d)(II) of this section, the court shall order the article, after entry of the decree, to be destroyed at the expense of the owner of the article under the supervision of the agent. The owner of the article or the owner's agent shall bear all court costs and fees, storage, and other proper expense.

(II) When the owner can correct the adulteration or misbranding by proper labeling or processing of the article, after entry of the decree and after the owner has paid the costs, fees, and expenses and has posted a good and sufficient bond, conditioned that the article be properly labeled or processed, the court may direct, by order, that the article be delivered to the owner for proper labeling or processing under the supervision of an agent. The owner shall pay the expense of the agent's supervision. The bond must be returned to the owner of the article once the board represents to the court that the article is no longer in violation of the embargo and that the owner has paid the expenses of supervision.

(e) It is the duty of the attorney general or the district attorney to whom the board reports any violation of this subsection (4) to institute appropriate proceedings in the proper courts without delay and to prosecute the matter in the manner required by law. Nothing in this subsection (4)(e) requires the board to report violations when the board believes the public interest will be adequately served in the circumstances by a suitable written notice or warning.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1448, § 1, effective October 1; (1)(b), (1)(c), (1)(e), and (1)(f)(I) amended, (HB 19-1242), ch. 434, p. 3749, § 3, effective October 1. **L. 2021:** (1)(a) and (1)(j) amended and (1)(k) added, (SB 21-094), ch. 314, p. 1929, § 6, effective September 1. **L. 2024:** (1)(k) amended, (SB 24-209), ch. 456, p. 3155, § 2, effective July 1.

Editor's note: (1) This section is similar to former § 12-42.5-106 as it existed prior to 2019.

(2) Section 4 of chapter 456 (SB 24-209), Session Laws of San Andreas 2024, provides that the act changing this section applies to prescription drugs dispensed on or after July 1, 2024.

12-280-109. Drugs, devices, and other materials. (1) The board is responsible for the control and regulation of drugs, including the following:

(a) The regulation of the sale at retail and the dispensing of drugs;

(b) The specification of minimum professional and technical equipment, environment, supplies, and procedures for the compounding or dispensing of medications and drugs;

(c) The control of the purity and quality of drugs.

(2) The board is responsible for the control and regulation of the sale of devices at retail; except that the board shall not regulate the sale of any disposable veterinary device. The board may also exempt from regulation veterinary devices:

(a) That are regulated by the FDA; or

(b) For which the board determines regulation is unnecessary.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1450, § 1, effective October 1.

Editor's note: This section is similar to former § 12-42.5-107 as it existed prior to 2019.

12-280-110. Publications. The board shall issue its publications that are circulated in quantity outside the executive branch in accordance with section 24-1-136. The board shall circulate its publications to all registered prescription drug outlets that will be directly affected by the publications.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1451, § 1, effective October 1.

Editor's note: This section is similar to former § 12-42.5-108 as it existed prior to 2019.

12-280-111. Malpractice claims information - not public - exception. Information relating to each malpractice claim provided by insurance companies or self-insured pharmacists or pharmacies pursuant to section 10-1-125.3 is exempt from the provisions of any law requiring that the proceedings of the board be conducted publicly or that the minutes or records of the board be open to public inspection unless the board takes final disciplinary action. The board may use the information in any formal hearing involving a licensee or registrant.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1451, § 1, effective October 1. **L. 2021:** Entire section amended, (SB 21-094), ch. 314, p. 1930, § 7, effective September 1.

Editor's note: This section is similar to former § 12-42.5-109 as it existed prior to 2019.

12-280-112. Fees. (1) The director shall determine, and the board shall collect, fees pursuant to section 12-20-105 for the following licenses, certifications, and registrations:

(a) For certifying to another state the grades of a person who has taken the pharmacist examination in this state;

(b) For the initial licensure, upon examination, as a pharmacist, as provided in section 12-280-114 (4);

(c) For the initial licensure, without examination and upon presentation of evidence of licensure in another state, as a pharmacist, as provided in section 12-280-114 (8);

(d) For the renewal of a license as a licensed pharmacist, as provided in section 12-280-116 (1);

(e) For reinstatement as a licensed pharmacist, as provided in section 12-280-116 (2);

(f) For the transfer of a prescription drug outlet registration to a new owner, as provided in section 12-280-118 (2);

(g) For the transfer of a manager's name, as provided in section 12-280-118 (1);

(h) For the issuance of a duplicate certificate to a licensed pharmacist;

(i) For the initial licensure as a pharmacy intern;

(j) For the issuance of a duplicate license of a pharmacy intern;

(k) For the transfer of a prescription drug outlet registration to a new location, as provided in section 12-280-118 (2);

(l) For reissuing a prescription drug outlet registration in a new store name, without change of owner or manager, as provided in section 12-280-118 (2);

(m) For the initial registration or the renewal of the registration of a prescription drug outlet, as provided in section 12-280-118 (2);

(n) For the initial certificate evidencing licensure for all pharmacists;

(o) For the initial and renewal registration of all other outlets under section 12-280-119 not covered in this section;

(p) For the initial and renewal registration of all nonresident prescription drug outlets under section 12-280-133;

(q) For the initial and renewal registration of animal shelters and animal control agencies pursuant to section 12-280-119 (12);

(r) For the initial certification or provisional certification as a pharmacy technician, as provided in section 12-280-115.5;

(s) For the renewal of a certification as a pharmacy technician issued pursuant to section 12-280-115.5 (2), as provided in section 12-280-116 (1);

(t) For reinstatement as a pharmacy technician, as provided in section 12-280-116 (2);

(u) For the issuance of a duplicate certificate to a pharmacy technician.

(2) Any pharmacist licensed in San Andreas for fifty years or more as a pharmacist is exempt from the payment of fees under this article 280 and is allowed to practice as a licensed pharmacist.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1451, § 1, effective October 1; IP(1) amended and (1)(r) to (1)(u) added, (HB 19-1242), ch. 434, p. 3749, § 4, effective October 1. **L. 2022:** (1)(q) amended, (HB 22-1235), ch. 442, p. 3118, § 23, effective August 10.

Editor's note: This section is similar to former § 12-42.5-110 as it existed prior to 2019.

12-280-113. Approval of schools. (1) A school or college of pharmacy that is approved by the board as a school or college of pharmacy from which graduation is required in order for the graduate of the school or college of pharmacy to apply for a license as a pharmacist must meet the requirements set forth by the board.

(2) The board may utilize the facilities, reports, requirements, and recommendations of any recognized accrediting organization in determining the requirements for a school or college of pharmacy.

(3) The board shall maintain a list of approved schools or colleges.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1452, § 1, effective October 1.

Editor's note: This section is similar to former § 12-42.5-111 as it existed prior to 2019.

12-280-114. Licensure, certification, or registration - applicability - applications - licensure and certification requirements - rules. (1) This article 280 applies to all persons in this state engaged in the practice of pharmacy and to all outlets in this state engaged in the manufacture, dispensing, production, sale, and distribution of drugs, devices, and other materials used in the treatment of injury, illness, and disease.

(2) (a) Every applicant for a license or certification under this article 280 must read and write the English language, or if the applicant is a partnership, each member of the partnership must read and write the English language. If the applicant is a San Andreas corporation, the corporation must be in good standing, and if the applicant is a foreign corporation, it must be qualified to do business in this state.

(b) The board shall issue the appropriate registration to each manufacturer and wholesaler that meets the requirements of this article 280 unless the board determines that the issuance of the registration would be inconsistent with the public interest. In determining the public interest, the board shall consider the following factors:

(I) Maintenance of effective controls against diversion of controlled substances into illegitimate medical, scientific, or industrial channels;

(II) Compliance with applicable state and local laws;

(III) Any conviction of the applicant under any federal or state law relating to a controlled substance;

(IV) Past experience in the manufacture or distribution of controlled substances and the existence in the applicant's establishment of effective controls against diversion;

(V) Any false or fraudulent information in an application filed under this part 1;

(VI) Suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense a controlled substance as authorized by federal law; and

(VII) Any other factors relevant to and consistent with the public peace, health, and safety.

(c) The board shall issue a certification to an applicant to practice as a pharmacy technician who satisfies the requirements of this article 280, this section, and section 12-280-115.5.

(3) Every applicant for a license, certification, or registration under this article 280 shall make written application in the manner and form prescribed by the board, setting forth the

applicant's name and address, the applicant's qualifications for the license, certification, or registration, and other information required by the board. The applicant shall submit with the application the required fee, and, if the applicant is required to take an examination, the applicant shall appear for examination at the time and place fixed by the board.

(4) (a) (I) An applicant who has graduated from a school or college of pharmacy approved by the board may take an examination before the board.

(II) The examination must be designed fairly to test the applicant's knowledge of pharmacy and other related subjects and must be in a form approved by the board. The examination cannot be administered orally.

(III) An applicant for licensure by examination shall have completed an internship as prescribed by the board.

(b) A person who produces evidence satisfactory to the board that the person has graduated and obtained a degree from a school of pharmacy outside the United States and has passed a foreign graduate equivalency test given or approved by the board may apply to take the examination set forth in subsection (4)(a) of this section.

(5) Every applicant for licensure as a pharmacist, whether by examination, transfer of license, reactivation, or reinstatement, shall take a jurisprudence examination approved by the board that tests the applicant's knowledge of the laws of this state.

(6) No applicant shall exercise the privileges of licensure, certification, or registration until the board grants the license, certification, or registration.

(7) The board may require any applicant for licensure or certification to display written or oral competency in English. The board may utilize a standardized test to determine language proficiency.

(8) A person licensed by examination and in good standing in another state may apply for a license transfer pursuant to the occupational credential portability program.

(9) The board shall adopt rules as necessary to ensure that any person who manufactures drugs and any wholesaler of drugs possesses the minimum qualifications required for wholesale drug distributors pursuant to the federal "Prescription Drug Marketing Act of 1987", 21 U.S.C. sec. 353, as amended.

(10) Issuance of a license or registration under this section and section 12-280-119 does not entitle a licensee or registered facility or outlet to wholesale, manufacture, distribute, dispense, or professionally use controlled substances beyond the scope of the licensee's or registrant's federal registration.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1453, § 1, effective October 1; (2)(a), (3), (6), and (7) amended and (2)(c) added, (HB 19-1242), ch. 434, p. 3749, § 5, effective October 1. **L. 2020:** (8) amended, (HB 20-1326), ch. 126, p. 545, § 39, effective June 25.

Editor's note: This section is similar to former § 12-42.5-112 as it existed prior to 2019.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-280-115. Exemptions from licensure - hospital residency programs - home renal dialysis - research companies. (1) The board is authorized to approve hospital residency programs in the practice of pharmacy. Persons accepted into an approved hospital residency program who are licensed to practice pharmacy in another state are exempt from the licensing requirements of this article 280 so long as their practice is limited to participation in the residency program.

(2) This article 280 does not apply to the sale or delivery of a dialysis solution if all of the following conditions are met:

(a) The sale or delivery is made directly by the manufacturer to a person with chronic kidney failure or to the designee of the person;

(b) The sale or delivery is for the purpose of self-administration by the person pursuant to an order by a physician lawfully practicing in this state; and

(c) The solution is sold or delivered in original packages, properly labeled, and unadulterated in accordance with the requirements of the "San Andreas Food and Drug Act", part 4 of article 5 of title 25, and the "Federal Food, Drug, and Cosmetic Act", 21 U.S.C. sec. 301 et seq., as amended.

(3) A manufacturer that must obtain a prescription drug or device solely for use in its research, development, or testing procedures and that does not further distribute the drug or device may apply to the board for a waiver of registration pursuant to this subsection (3). The board may grant a waiver if the manufacturer submits to the board the name of the drug or device it requires and an affidavit certifying that the drug or device will only be used for necessary research, development, or testing procedures and will not be further distributed. A waiver granted pursuant to this subsection (3) does not apply to a controlled substance, as defined in section 18-18-102 (5), or in federal law.

(4) An employee of a facility, as defined in section 25-1.5-301, who is administering and monitoring medications to persons under the care or jurisdiction of the facility pursuant to part 3 of article 1.5 of title 25 need not be licensed by the board to lawfully possess controlled substances under this article 280.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1455, § 1, effective October 1.

Editor's note: This section is similar to former § 12-42.5-113 as it existed prior to 2019.

12-280-115.5. Certification of pharmacy technicians - requirements - provisional certification - criminal history record check - rules. (1) On or after March 30, 2020, a person shall not engage in the practice as a pharmacy technician unless the person has obtained a certification or provisional certification from the board in accordance with this section.

(2) In addition to any other requirements specified in section 12-280-114 or this article 280, to be certified as a pharmacy technician, an applicant must:

(a) Provide proof satisfactory to the board that the applicant has obtained and maintains in good standing certification as a pharmacy technician from a certifying organization; and

(b) (I) Submit to a criminal history record check in the form and manner as determined by the board by rule; or

(II) Provide proof satisfactory to the board that the applicant submitted to a criminal history record check as a condition of employment at a pharmacy or other outlet, as required by the applicant's current employer, as a condition of participating in a course of study for or with a certifying organization, or in connection with obtaining certification from a certifying organization.

(3) (a) If an applicant for certification as a pharmacy technician has not satisfied the requirements of subsection (2)(a) of this section at the time of application to the board, the board may grant the applicant a provisional certification upon satisfaction of all other requirements for certification specified in this section and section 12-280-114.

(b) (I) Except as provided in subsection (3)(b)(II) of this section, a provisional certification is valid for not more than eighteen months after the date of issuance and is not renewable. If a person who is granted a provisional certification pursuant to this subsection (3) fails to satisfy the requirements of subsection (2)(a) of this section within eighteen months after the date the provisional certification is issued or within an extended period granted by the board pursuant to subsection (3)(b)(II) of this section, the provisional certification expires and the person shall not practice as a pharmacy technician until the person applies for and receives a certification in accordance with subsection (2) of this section.

(II) The board shall adopt rules to establish a process for a provisional certificant to apply for a hardship extension to extend the validity of the provisional certification beyond eighteen months. The board shall establish criteria for qualifying for a hardship extension based on:

(A) The negative effects on access to care in the community served by the provisional certificant or the employer of the provisional certificant;

(B) Financial hardship; or

(C) Health circumstances.

(c) A person whose provisional certification expires is not precluded from applying to the board for certification as a pharmacy technician in accordance with subsection (2) of this section.

Source: L. 2019: Entire section added, (HB 19-1242), ch. 434, p. 3750, § 6, effective October 1.

12-280-116. Expiration and renewal of licenses, certifications, or registrations. (1) All licenses, certifications, and registrations issued pursuant to this article 280, except provisional certifications issued pursuant to section 12-280-115.5 (3), are subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2). Any person whose license, certification, or registration expires is subject to the penalties provided in this article 280 or section 12-20-202 (1).

(2) A pharmacist who fails to renew his or her license or a pharmacy technician who fails to renew his or her certification issued pursuant to section 12-280-115.5 (2) on or before the applicable renewal time may have the license or certification, as applicable, reinstated in accordance with section 12-20-202 (2) for the remainder of the current renewal period by filing a proper application, satisfying the board that the pharmacist or pharmacy technician, as applicable, is fully qualified to practice, and paying the reinstatement fee as provided in section 12-280-112 (1)(e) and (1)(t) and all delinquent fees.

(3) Except for good cause shown, the board shall not grant a license to a pharmacy intern more than two years after the applicant has ceased to be an enrolled student in a college or school of pharmacy approved by the board.

(4) On and after July 1, 2023, as a condition of renewal of a license, each pharmacist shall attest that the pharmacist is in compliance with section 12-280-403 (2)(a) and that the pharmacist is aware of the penalties for noncompliance with that section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1455, § 1, effective October 1; (1) and (2) amended, (HB 19-1242), ch. 434, p. 3751, § 7, effective October 1. **L. 2022:** (4) added, (HB 22-1115), ch. 397, p. 2826, § 6, effective August 10.

Editor's note: This section is similar to former § 12-42.5-114 as it existed prior to 2019.

12-280-117. Continuing education - exceptions - inactive status. (1) Except as permitted in subsections (2) and (3) of this section, the board shall not renew, reinstate, or reactivate the license of any pharmacist until the pharmacist presents evidence that he or she has completed twenty-four hours of approved continuing pharmaceutical education within the preceding two years. Subject to subsection (9) of this section, the evidence may be provided by checking a sign-off box on the license renewal application.

(2) (a) The board may renew the license of a pharmacist who presents acceptable evidence that the pharmacist was unable to comply with subsection (1) of this section.

(b) The board may grant a six-month compliance extension to pharmacists who are unable to comply with subsection (1) of this section.

(3) The board may renew the license for the first renewal period following the issuance of the original license without requiring a pharmacist to complete any continuing pharmaceutical education if the pharmacist obtains a license within one year after the completion of the pharmacist's pharmaceutical education.

(4) To qualify for continuing education credit, a program of continuing pharmaceutical education must be currently approved by the Accreditation Council for Pharmacy Education or an equivalent accrediting body as determined by the board.

(5) Each program of continuing pharmaceutical education must consist of at least one continuing education unit, which is one hour of participation in an organized continuing educational experience, including postgraduate studies, institutes, seminars, lectures, conferences, workshops, correspondence courses, audio programs, programmed learning courses, audiovisual programs, internet programs, and any other form of presentation that is accredited.

(6) Any aspect of the practice of pharmacy may be the subject of a program of continuing pharmaceutical education, including pharmaceutics, compounding, pharmacology, pharmaceutical chemistry, biochemistry, physiology, microbiology, pharmacy administration, and professional practice management.

(7) A program of continuing pharmaceutical education may include the following:

(a) A definite stated objective;

(b) Presentation in an organized manner; and

(c) A method of program evaluation that is suitable to the type of program being presented.

(8) A program of continuing pharmaceutical education must meet the requirements as established by the accrediting body.

(9) The board may annually audit up to five percent of the pharmacists licensed and residing in San Andreas to determine compliance with this section.

(10) If a licensed pharmacist fails to obtain the twenty-four hours of approved continuing pharmaceutical education, the pharmacist's license becomes inactive. An inactive licensee is not required to comply with any continuing pharmaceutical education requirement so long as the licensee remains inactive, but the licensee must continue to pay applicable fees, including renewal fees. The board shall note "inactive status" on the face of any license it issues to a licensee while the licensee remains inactive. Should an inactive pharmacist wish to resume the practice of pharmacy after being placed on an inactive list, the pharmacist shall file an application to activate his or her license, pay the license renewal fee, and, subject to subsections (2) and (3) of this section, meet the twenty-four-hour continuing education requirement. If a licensed pharmacist engages in the practice of pharmacy while on inactive status, that conduct may be grounds for license revocation under this article 280.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1456, § 1, effective October 1. **L. 2022:** (5) amended, (SB 22-212), ch. 421, p. 2968, § 23, effective August 10.

Editor's note: This section is similar to former § 12-42.5-115 as it existed prior to 2019.

12-280-117.5. Continuing education for pharmacy technicians - exceptions - inactive status. (1) The board shall not renew, reinstate, or reactivate the certification of a pharmacy technician that was issued pursuant to section 12-280-115.5 (2) until the pharmacy technician presents evidence that the pharmacy technician maintains active certification with a certifying organization. Subject to subsection (2) of this section, the evidence may be provided by an attestation on the certification renewal application.

(2) The board may annually audit up to five percent of the pharmacy technicians certified and residing in San Andreas to determine compliance with this section.

(3) If a pharmacy technician fails to complete the continuing education and renewal requirements of, and maintain active certification with, a certifying organization, the pharmacy technician's state certification becomes inactive. An inactive certificant is not required to comply with any continuing pharmacy technician education requirement so long as the certificant remains inactive, but the certificant must continue to pay applicable fees, including renewal fees. The board shall note "inactive status" on the face of any certification it issues to a certificant while the certificant remains inactive. Before an inactive pharmacy technician resumes practice as a pharmacy technician after being placed on an inactive list, the pharmacy technician must file an application to activate the certification, pay the certification renewal fee, and meet the continuing education requirements of this section. If a pharmacy technician engages in practice as a pharmacy technician while on inactive status, that conduct is grounds for certification revocation under this article 280.

Source: L. 2019: Entire section added, (HB 19-1242), ch. 434, p. 3752, § 8, effective October 1.

12-280-118. Prescription drug outlet under charge of pharmacist - rules. (1) (a) A prescription drug outlet must be under the direct charge of a pharmacist manager. A proprietor who is not a pharmacist shall comply with this requirement and shall provide a manager who is a pharmacist. Nothing in this article 280 or rules implementing this article 280 shall prohibit the pharmacist manager of a central pharmacy from simultaneously serving as the pharmacist manager of a telepharmacy outlet.

(b) The registration of any prescription drug outlet becomes void if the pharmacist manager in whose name the prescription drug outlet registration was issued ceases to be engaged as the manager. The owner shall close the prescription drug outlet unless the owner:

(I) Employs a new pharmacist manager; and

(II) Within thirty days after termination of the former manager's employment:

(A) Applies to transfer the registration to the new pharmacist manager; and

(B) Pays the registration transfer fee.

(c) At the time the pharmacist manager in whose name the registration was obtained ceases to be employed as the pharmacist manager, he or she shall immediately report to the board the fact that he or she is no longer manager of the prescription drug outlet. The pharmacist manager is responsible as the manager until the cessation of employment is reported. The proprietor of the prescription drug outlet shall also notify the board of the termination of managership.

(2) A prescription drug outlet shall not commence business until it applies to the board for a registration and receives from the board a registration showing the name of the proprietor and the name of the manager. Upon transfer of the ownership of a prescription drug outlet, the new proprietor shall submit to the board an application to transfer the registration of the prescription drug outlet, and, upon approval of the transfer by the board, the board shall transfer the registration to the new proprietor. Upon the change of name or location of a prescription drug outlet, the registrant shall submit an application to change the name or location and the applicable fee, and, upon approval of the application, the board shall issue a new registration showing the new name or new location.

(3) (a) A prescription drug outlet operated by the state of San Andreas or any political subdivision of the state is not required to be registered but, in lieu of a registration, must apply to the board, on a form approved by the board, for a certificate of compliance. The board shall determine whether the prescription drug outlet is operated in accordance with the laws of this state and the rules of the board. If the board determines that the prescription drug outlet is operated in accordance with state laws and board rules, except for the holding of a prescription drug outlet registration, the board shall issue a certificate of compliance, which certificate expires and may be renewed in accordance with section 12-20-202 (1). Once the board issues the certificate of compliance, the prescription drug outlet has the rights and privileges of, and is treated in all respects as, a registered prescription drug outlet. The provisions of this article 280 with respect to the denial, suspension, or revocation of a prescription drug outlet registration apply to a certificate of compliance.

(b) An outlet as recognized in section 12-280-119 (1)(d) need not be under the direct charge of a pharmacist, but a licensed pharmacist shall either initially interpret all prescription orders compounded or dispensed from the outlet or provide written protocols for compounding and dispensing by pharmacy technicians. An outlet qualifying for registration under this subsection (3)(b) may also apply to the board for a waiver of the requirements concerning

physical space, equipment, inventory, or business hours as necessary and consistent with the outlet's limited public welfare purpose. In determining the granting or denial of a waiver application, the board shall ensure that the public interest criteria set forth in section 12-280-101 are satisfied. All other provisions of this article 280, except as specifically waived by the board, apply to the outlet.

(c) A telepharmacy outlet is required to have a pharmacist manager. A telepharmacy outlet is considered to be under the direct charge or control of the pharmacist manager, or the licensed pharmacist delegate, who provides remote supervision to the telepharmacy outlet.

(4) Every outlet and every pharmacist and pharmacy intern regularly practicing shall conspicuously display the registration and license, respectively, within the premises of the place of practice or outlet.

(5) (a) Except as specified in subsection (5)(b) of this section, the pharmacist responsible for the prescription order or chart order may delegate the following tasks to the following individuals if, in the pharmacist's professional judgment, the delegation is appropriate:

(I) Specific tasks, excluding tasks described in section 12-280-103 (38.5)(a), to ancillary personnel, other than a pharmacist or pharmacy intern, who are under the pharmacist's supervision, which tasks may include:

(A) Cashier transactions;

(B) Medication shipping and handling;

(C) Medication transportation;

(D) Record keeping;

(E) Telephone or communication triage; or

(F) Inventory management; or

(II) Specific tasks described in section 12-280-103 (38.5)(a) or in board rules adopted pursuant to section 12-280-103 (38.5)(a)(IX) to a pharmacy technician who is under the pharmacist's supervision.

(b) The pharmacist shall not make a delegation described in subsection (5)(a) of this section if the delegation jeopardizes the public health, safety, or welfare, is prohibited by rule of the board, or violates section 12-280-129 (1).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1457, § 1, effective October 1; (3)(b) and (5) amended, (HB 19-1242), ch. 434, p. 3752, § 9, effective October 1. **L. 2021:** (5)(a)(I) and (5)(a)(II) amended, (SB 21-094), ch. 314, p. 1930, § 8, effective September 1. **L. 2022:** (1)(a) amended and (3)(c) added, (SB 22-173), ch. 484, p. 3519, § 3, effective August 10. **L. 2023:** (5)(a)(II) amended, (SB 23-162), ch. 148, p. 630, § 2, effective August 7.

Editor's note: This section is similar to former § 12-42.5-116 as it existed prior to 2019.

12-280-119. Registration of facilities - rules. (1) All outlets with facilities in this state shall register with the board in one of the following classifications:

(a) Prescription drug outlet;

(b) Wholesale drug outlet;

(c) Manufacturing drug outlet;

(d) Any other outlet, as may be authorized by this article 280 or that meets the definition of other outlet as set forth in section 12-280-103 (32).

(2) The board shall establish, by rule, criteria, consistent with section 12-280-114 and with the public interest as set forth in section 12-280-101, that an outlet that has employees or personnel engaged in the practice of pharmacy must meet to qualify for registration in each classification.

(3) The board shall specify by rule the registration procedures applicants must follow, including the specifications for application for registration and the information needed.

(4) Registrations issued by the board pursuant to this section are transferable or assignable only pursuant to this article 280 and rules established by the board.

(5) It is lawful for a person to sell and distribute nonprescription drugs. Any person engaged in the sale and distribution of nonprescription drugs is not improperly engaged in the practice of pharmacy, and the board shall not promulgate any rule pursuant to this article 280 that permits the sale of nonprescription drugs only by a licensed pharmacist or only under the supervision of a licensed pharmacist or that would otherwise apply to or interfere with the sale and distribution of nonprescription drugs.

(6) The board shall accept the licensure or certification of nursing care facilities and intermediate care facilities required by the department of public health and environment as sufficient registration under this section.

(7) A separate registration is required under this section for any area outside the outlet that is not a satellite where pharmacist care services are provided and for any area outside the outlet that is under different ownership from the outlet.

(8) No hospital outlet filling inpatient chart orders shall sell or otherwise transfer any portion of its prescription drug inventory to another registered outlet for sale or dispensing at retail. This subsection (8) does not limit any transfer of prescription drugs for the hospital's own use or limit the ability of a hospital outlet to engage in a casual sale.

(9) Repealed.

(10) (a) A satellite shall register as a hospital satellite pharmacy if the satellite:

(I) Is located in a facility that is under the same management and control as the building or site where the prescription drug outlet is located; and

(II) Has a different address than the prescription drug outlet.

(b) The board shall adopt rules as necessary to implement this subsection (10). At a minimum, the rules must set forth the manner in which a satellite is to apply for a hospital satellite pharmacy registration and the limits on the distance of satellites from the main prescription drug outlet.

(11) (a) A prescription drug outlet may register as a specialized prescription drug outlet if it engages in the compounding, dispensing, and delivery of drugs and devices to, or the provision of pharmacist care services to, residents of a long-term care facility.

(b) A pharmacy located in a hospice inpatient unit may register as a specialized prescription drug outlet if the pharmacy compounds drugs and devices and dispenses and delivers the drugs and devices, or provides pharmacist care services, to residents of the hospice inpatient unit.

(c) The board shall adopt rules as necessary to implement this subsection (11).

(12) (a) An animal shelter that is duly registered with the secretary of state and has been in existence and in business for at least five years in this state as a nonprofit corporation, or an animal control agency that is operated by a unit of government, shall register with the board.

(b) The board may issue a limited license to an animal shelter or animal control agency to perform the activities described in section 12-280-120 (17).

(c) The board shall adopt rules as necessary to ensure strict compliance with this subsection (12) and section 12-280-120 (17) and, in conjunction with the state board of veterinary medicine, shall develop criteria for training individuals in the administration of the drug or combination of drugs.

(d) Nothing in this subsection (12) applies to a licensed veterinarian.

(13) A facility or outlet applying for a registration under this section shall have adequate and proper facilities for the handling and storage of controlled substances and shall maintain proper control over the controlled substances to ensure the controlled substances are not illegally dispensed or distributed.

(14) The board shall not issue a registration under this section to a manufacturer or distributor of marijuana or marijuana concentrate, as those terms are defined in section 27-80-203 (15) and (16), respectively.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1459, § 1, effective October 1. **L. 2020:** (1)(d) amended, (HB 20-1050), ch. 76, p. 313, § 2, effective September 14. **L. 2021:** (7) and (11) amended and (9) repealed, (SB 21-094), ch. 314, p. 1931, § 9, effective September 1. **L. 2022:** (11) amended, (HB 22-1246), ch. 454, p. 3257, § 1, effective August 10; (12)(a) and (12)(b) amended, (HB 22-1235), ch. 442, p. 3118, § 24, effective August 10.

Editor's note: This section is similar to former § 12-42.5-117 as it existed prior to 2019.

12-280-120. Compounding - dispensing - sale of drugs and devices - rules - definition. (1) Except as otherwise provided in this section or part 2 of article 80 of title 27, no drug, controlled substance, or device shall be sold, compounded, dispensed, given, received, or held in possession unless it is sold, compounded, dispensed, given, or received in accordance with this section.

(2) Except as provided in subsection (7) of this section, a manufacturer of drugs may sell or give any drug to:

(a) Any wholesaler of drugs;

(b) A licensed hospital;

(c) An other outlet;

(d) A registered prescription drug outlet; or

(e) Any practitioner authorized by law to prescribe the drugs.

(3) (a) A wholesaler may sell or give any drug or device to:

(I) Another wholesaler of drugs or devices;

(II) Any licensed hospital;

(III) A registered prescription drug outlet;

(IV) An other outlet; or

(V) Any practitioner authorized by law to prescribe the drugs or devices.

(b) A wholesaler may sell or deliver to a person responsible for the control of an animal a drug intended for veterinary use for that animal only if a licensed veterinarian has issued, prior to the sale or delivery, a written prescription order for the drug in the course of an existing, valid veterinarian-client-patient relationship as defined in section 12-315-104 (19); except that, if the prescription order is for a drug that is not a controlled substance or is a controlled substance listed on schedule III, IV, or V, the licensed veterinarian may issue an oral prescription order for that drug. If the licensed veterinarian issues an oral prescription order for a controlled substance listed on schedule III, IV, or V, the licensed veterinarian shall provide a written prescription to the wholesaler within three business days after issuing the oral order.

(4) Only a registered prescription drug outlet or other outlet registered pursuant to section 12-280-119 (1)(d) may compound or dispense a prescription. Initial interpretation and final evaluation, as defined by the board, may be conducted at a location other than a registered prescription drug outlet or other outlet registered pursuant to this article 280 in accordance with rules adopted by the board.

(5) (a) A registered prescription drug outlet or other outlet may:

(I) Make a casual sale of a drug in the manufacturer's sealed container to another registered outlet;

(II) Make a casual sale of a drug in the manufacturer's sealed container to a practitioner authorized by law to prescribe the drug;

(III) Supply an emergency kit or starter dose, as defined by the board by rule, to:

(A) Any facility approved by the board for receipt of an emergency kit;

(B) Any home health agency licensed by the department of public health and environment and approved by the board for receipt of an emergency kit;

(C) Any licensed hospice approved by the board for receipt of an emergency kit in compliance with subsection (12) of this section; and

(D) Any acute treatment unit licensed by the department of public health and environment and approved by the board for receipt of an emergency kit.

(b) Repealed.

(c) Pursuant to section 17-1-113.1, the department of corrections may transfer, deliver, or distribute to a corporation, individual, or other entity entitled to possess prescription drugs, other than a consumer, prescription drugs in an amount that is less than, equal to, or in excess of five percent of the total number of dosage units of drugs dispensed and distributed on an annual basis.

(6) (a) A practitioner may personally compound and dispense for any patient under the practitioner's care any drug that the practitioner is authorized to prescribe and that the practitioner deems desirable or necessary in the treatment of any condition being treated by the practitioner, and the practitioner is exempt from all provisions of this article 280 except section 12-280-129.

(b) (I) A prescription drug outlet located in this state may compound and distribute drugs for veterinary use pursuant to section 12-280-121, but the amount of drugs the prescription drug outlet may compound and distribute for veterinary use must not exceed ten percent of the total number of drug dosage units dispensed and distributed on an annual basis by the outlet.

(II) As used in this subsection (6)(b), a "prescription drug outlet" includes a nonresident pharmacy outlet registered or licensed pursuant to this article 280 where prescriptions are compounded and dispensed, but only if the nonresident pharmacy outlet has provided the board

with a copy of the most recent inspection of the nonresident pharmacy outlet by the agency that regulates pharmaceuticals in the state of residence and a copy of the most recent inspection received from a board-approved third-party entity that inspects pharmacy outlets, for which third-party inspection the nonresident pharmacy outlet shall obtain and pay for on an annual basis, and the board approves the inspection reports as satisfactorily demonstrating proof of compliance with the board's own inspection procedure and standards.

(c) Nothing in this section prohibits an optometrist licensed pursuant to article 275 of this title 12 or a physician licensed pursuant to article 240 of this title 12 from charging a fee for prescribing, adjusting, fitting, adapting, or dispensing drugs for ophthalmic purposes and ophthalmic devices, such as contact lenses, that are classified by the FDA as a drug or device, as long as the activity is within the scope of practice of the optometrist pursuant to article 275 of this title 12 or the scope of practice of the physician pursuant to article 240 of this title 12.

(7) Distribution of any sample may be made only upon written receipt from a practitioner, and the receipt must be given specifically for each drug or drug strength received.

(8) It is lawful for the vendor of any drug or device to repurchase the drug or device from the vendee to correct an error, to retire an outdated article, or for other good reason, under rules the board may adopt to protect consumers of drugs and devices against the possibility of obtaining unsafe or contaminated drugs or devices.

(9) A duly authorized agent or employee of an outlet registered by the board is not deemed to be in possession of a drug or device in violation of this section if he or she is in possession of the drug or device for the sole purpose of carrying out the authority granted by this section to his or her principal or employer.

(10) (a) (I) Any hospital employee or agent authorized by law to administer or dispense medications may dispense a seventy-two-hour supply of drugs on the specific order of a practitioner to a registered emergency room patient.

(II) Notwithstanding subsection (10)(a)(I) of this section, if the hospital employee or agent described in subsection (10)(a)(I) of this section is treating a registered emergency room patient for sexual assault, the hospital employee or agent may, in accordance with the guidelines of the federal centers for disease control and prevention, dispense between a seven-day and twenty-eight-day supply of drugs for prophylaxis of sexually transmitted infections to the patient.

(b) A hospital may dispense a prescription drug pursuant to a chart order for a hospitalized patient for use by the patient during a temporary leave from the hospital of less than seventy-two hours if the prescription drug:

(I) Is labeled in accordance with section 12-280-124 (1) and (2);

(II) Is administered by an authorized person;

(III) Is dispensed pursuant to a current, active order; and

(IV) Is limited to a seventy-two-hour supply or, if the temporary leave is for less than twenty-four hours, the quantity the patient requires during the temporary leave.

(11) The original, duplicate, or electronic or mechanical facsimile of a chart order by the physician or lawfully designated agent constitutes a valid authorization to a pharmacist or pharmacy intern to dispense to a hospitalized patient for administration the amounts of the drugs as will enable an authorized person to administer to the patient the drug ordered by the practitioner. The practitioner is responsible for verifying the accuracy of any chart order he or

she transmitted to anyone other than a pharmacist or intern within forty-eight hours of the transmittal.

(12) Any facility approved by the board, any home health agency certified by the department of public health and environment and approved by the board, and any licensed hospice approved by the board may maintain emergency drugs provided and owned by a prescription drug outlet, consisting of drugs and quantities as established by the board.

(13) An intern under the direct and immediate supervision of a pharmacist may engage in the practice of pharmacy. An intern, as defined in section 12-280-103 (22)(a), engaged in the practice of pharmacy within the curriculum of a school or college of pharmacy in accordance with section 12-280-103 (22)(a), may be supervised by a manufacturer registered pursuant to section 12-280-114 or by another regulated individual as provided for in rules adopted by the board.

(14) A manufacturer or wholesaler of prescription drugs shall not sell or give any prescription drug, as provided in subsections (2) and (3) of this section, to a licensed hospital or registered outlet or to any practitioner unless the prescription drug stock container bears a label containing the name and place of business of the manufacturer of the finished dosage form of the drug and, if different from the manufacturer, the name and place of business of the packer or distributor.

(15) (a) Repealed.

(b) The following may distribute prepackaged medications, without limitation, to pharmacies and other outlets under common ownership of the entity:

(I) A prescription drug outlet owned and operated by a hospital that is accredited by the Joint Commission or a successor organization;

(II) A prescription drug outlet operated by a health maintenance organization, as defined in section 10-16-102; and

(III) The San Andreas department of corrections.

(c) (I) A prescription drug outlet shall not compound drugs that are commercially available except as provided in subsection (15)(c)(II) of this section.

(II) A pharmacist may compound a commercially available drug if the compounded drug is significantly different from the commercially available drug or if use of the compounded drug is in the best medical interest of the patient, based upon the practitioner's drug order, including the removal of a dye that causes an allergic reaction. If the pharmacist compounds a drug in lieu of a commercially available product, the pharmacist shall notify the patient of that fact.

(16) A prescription drug outlet may allow a licensed pharmacist to remove immunizations and vaccines from the prescription drug outlet for the purpose of administration by a licensed pharmacist, or an intern under the supervision of a pharmacist certified in immunization, pursuant to rules promulgated by the board. The board shall promulgate rules regarding the storage, transportation, and record keeping of immunizations and vaccines that are administered off site.

(17) (a) An animal shelter or animal control agency that is registered with the board pursuant to section 12-280-119 (12) is authorized to:

(I) Purchase, possess, and administer sodium pentobarbital, or sodium pentobarbital in combination with other prescription drugs that are medically recognized for euthanasia, to euthanize injured, sick, homeless, or unwanted pets and animals;

(II) Purchase, possess, and administer drugs commonly used for the chemical capture of animals for control purposes or to sedate or immobilize pet animals immediately prior to euthanasia; and

(III) Purchase and possess vaccines and administer vaccines in accordance with applicable laws.

(b) An animal shelter or animal control agency registered pursuant to section 12-280-119 (12) shall not permit a person to administer scheduled controlled substances, sodium pentobarbital, or sodium pentobarbital in combination with other noncontrolled prescription drugs that are medically recognized for euthanasia unless the person has demonstrated adequate knowledge of the potential hazards and proper techniques to be used in administering the drug or combination of drugs.

(18) Persons registered as required under this part 1, or otherwise licensed or registered as required by federal law, may possess, manufacture, distribute, dispense, or administer controlled substances only to the extent authorized by their registrations or federal registrations or licenses and in conformity with this article 280 and with article 18 of title 18.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1461, § 1, effective October 1. **L. 2020:** IP(5)(a), (5)(a)(I), and (5)(a)(II) amended and (5)(b) repealed, (HB 20-1050), ch. 76, p. 313, § 3, effective September 14. **L. 2021:** (6)(b), (10), and IP(15)(b) amended and (15)(a) repealed, (SB 21-094), ch. 314, p. 1931, § 10, effective September 1. **L. 2022:** (10)(a) amended, (HB 22-1309), ch. 248, p. 1832, § 1, effective May 26; IP(17)(a) and (17)(b) amended and (17)(a)(III) added, (HB 22-1235), ch. 442, p. 3118, § 25, effective August 10.

Editor's note: This section is similar to former § 12-42.5-118 as it existed prior to 2019.

12-280-121. Compounding drugs for office use by a veterinarian - rules - definitions. (1) A registered prescription drug outlet may compound and distribute a drug to a licensed veterinarian so that the veterinarian may maintain the drug as part of the veterinarian's office stock.

(2) (a) A veterinarian may dispense a compounded drug maintained as part of the veterinarian's office stock pursuant to subsection (1) of this section only if:

(I) The compounded drug is necessary for the treatment of an animal patient's emergency condition; and

(II) As determined by the veterinarian, the veterinarian cannot access, in a timely manner, the compounded drug through a registered prescription drug outlet.

(b) A veterinarian shall not dispense a compounded drug pursuant to this section in an amount greater than the amount required to treat an animal patient's emergency condition for five days.

(3) A licensed veterinarian shall not administer or dispense a compounded drug maintained for office stock pursuant to this section or for office use pursuant to section 12-280-120 (6)(b) without a valid veterinarian-client-patient relationship in place at the time of administering the compounded drug to an animal patient or dispensing the compounded drug to a client.

(4) To compound and distribute a controlled substance pursuant to this section or section 12-280-120 (6)(b), a registered prescription drug outlet shall possess a valid manufacturing registration from the federal drug enforcement administration.

(5) As used in this section, unless the context otherwise requires:

(a) "Client" has the same meaning as set forth in section 12-315-104 (4).

(b) "Office stock" means the storage of a compounded drug:

(I) That was distributed or sold by a registered prescription drug outlet to a veterinarian;

(II) Without a specific animal patient indicated to receive the compounded drug; and

(III) That the veterinarian may subsequently administer to an animal patient or dispense to a client.

(c) (I) "Prescription drug outlet" means any:

(A) Resident or nonresident pharmacy outlet registered or licensed pursuant to this article 280 where prescriptions are compounded and dispensed; or

(B) Federally owned and operated pharmacy registered with the federal drug enforcement administration.

(II) Notwithstanding subsection (5)(c)(I) of this section, "prescription drug outlet" does not include a nonresident pharmacy outlet unless the nonresident pharmacy outlet has provided the board with a copy of the most recent inspection of the nonresident pharmacy by the agency that regulates pharmaceuticals in the state of residence and a copy of the most recent inspection received from a board-approved third-party entity that inspects pharmacy outlets, for which third-party inspection the nonresident pharmacy outlet shall obtain and pay for on an annual basis, and the board approves the inspection reports as satisfactorily demonstrating proof of compliance with the board's own inspection procedure and standards.

(6) The board may promulgate rules as necessary concerning compounded veterinary pharmaceuticals pursuant to this section and section 12-280-120 (6)(b).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1465, § 1, effective October 1. **L. 2021:** (3), (4), and (6) amended, (SB 21-094), ch. 314, p. 1933, § 11, effective September 1.

Editor's note: This section is similar to former § 12-42.5-118.5 as it existed prior to 2019.

12-280-122. Limited authority to delegate activities constituting practice of pharmacy to pharmacy interns or pharmacy technicians - definition. (1) A pharmacist may supervise up to six persons who are either pharmacy interns or pharmacy technicians, of whom no more than two may be pharmacy interns. If three or more pharmacy technicians are on duty, the majority must be fully certified by the board in accordance with section 12-280-115.5 (2), and any pharmacy technician on duty who is not certified pursuant to section 12-280-115.5 (2) must have a provisional certification issued pursuant to section 12-280-115.5 (3).

(2) The pharmacy shall retain documentation verifying the training for review by the pharmacist responsible for the final check on prescriptions filled by the pharmacy technician and shall make the documentation available for inspection by the board.

(3) The supervision ratio specified in subsection (1) of this section does not include other ancillary personnel who may be in the prescription drug outlet but who are not performing duties

described in section 12-280-103 (39)(b) that are delegated to the interns or duties described in section 12-280-103 (38.5)(a) that are delegated to the pharmacy technicians.

(4) (a) The provisions of subsection (1) of this section apply to a central fill pharmacy; except that a pharmacist may supervise up to eight persons who are either pharmacy interns or pharmacy technicians, of whom no more than two may be pharmacy interns.

(b) As used in this subsection (4), "central fill pharmacy" means a pharmacy, other than a pharmacy located in a hospital licensed pursuant to section 25-1.5-103, that is not a public-facing pharmacy and that only acts as an agent of an originating pharmacy to fill or refill a prescription.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1467, § 1, effective October 1; (1) and (3) amended, (HB 19-1242), ch. 434, p. 3753, § 10, effective October 1. **L. 2023:** (1) amended and (4) added, (SB 23-162), ch. 148, p. 630, § 3, effective August 7.

Editor's note: This section is similar to former § 12-42.5-119 as it existed prior to 2019.

12-280-123. Prescription required - exception - dispensing opioid antagonists - selling nonprescription syringes and needles. (1) (a) Except as provided in sections 12-280-125.5 and 18-18-414 and subsections (2) and (3) of this section, an order is required prior to dispensing any prescription drug. Orders shall be readily retrievable within the appropriate statute of limitations.

(b) A pharmacist who receives an order for a controlled substance that is included in schedule II, III, or IV from a podiatrist, dentist, physician, physician assistant, advanced practice registered nurse, certified midwife, or optometrist, which order is not transmitted electronically to the pharmacist, is not required to verify the applicability of an exception to electronic prescribing of controlled substances under section 12-30-111 and may dispense the controlled substance pursuant to a written, oral, or facsimile-transmitted order that is otherwise valid and consistent with the requirements of current law.

(c) (I) A pharmacist who dispenses a prescription order for a prescription drug that is an opioid shall inform the individual of the potential dangers of a high dose of an opioid, as described by the federal centers for disease control and prevention in the United States department of health and human services, and offer to dispense to the individual to whom the opioid is being dispensed, on at least an annual basis, an opioid antagonist approved by the FDA for the reversal of an opioid overdose if:

(A) The individual is, at the same time, prescribed a benzodiazepine, a sedative hypnotic drug, carisoprodol, tramadol, or gabapentin; or

(B) The opioid prescription is at or in excess of ninety morphine milligram equivalent, as described in the guidelines of the federal centers for disease control and prevention.

(II) Notwithstanding section 12-30-110 (2)(a), if an individual to whom an opioid is being dispensed chooses to accept the pharmacist's offer for an opioid antagonist, the pharmacist shall counsel the individual on how to use the opioid antagonist in the event of an overdose. The pharmacist shall notify the individual of available generic and brand-name opioid antagonists.

(III) This subsection (1)(c) does not apply to a pharmacist dispensing a prescription medication to:

(A) A patient who is in hospice or palliative care; and

(B) A resident in a veterans community living center, as defined in section 26-12-102 (7).

(2) A pharmacist may refill a prescription order for any prescription drug without the practitioner's authorization when all reasonable efforts to contact the practitioner have failed and when, in the pharmacist's professional judgment, continuation of the medication is necessary for the patient's health, safety, and welfare. The prescription refill may only be in an amount sufficient to maintain the patient until the practitioner can be contacted, but in no event may a refill under this subsection (2) continue medication beyond seventy-two hours. However, if the practitioner states on the prescription that no emergency filling of the prescription is permitted, then the pharmacist shall not issue any medication that is not authorized by the prescription. Neither a prescription drug outlet nor a pharmacist is liable as a result of refusing to refill a prescription pursuant to this subsection (2).

(3) A pharmacist may prescribe and dispense an opioid antagonist in accordance with section 12-30-110.

(4) A pharmacist or pharmacy technician may sell a nonprescription syringe or needle to any person.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1467, § 1, effective October 1; (1) amended, (HB 19-1077), ch. 40, p. 138, § 5, effective October 1; (1) amended, (SB 19-079), ch. 86, p. 320, § 24, effective October 1. **L. 2020:** (1)(c) and (4) added, (HB 20-1065), ch. 287, pp. 1419, 1421, §§ 3, 8, effective September 14. **L. 2021:** (3) amended, (SB 21-094), ch. 314, p. 1933, § 12, effective September 1; (1)(c) amended, (SB 21-011), ch. 207, p. 1081, § 1, effective September 7. **L. 2023:** (1)(b) amended, (SB 23-167), ch. 261, p. 1545, § 49, effective May 25. **L. 2024:** IP(1)(c)(I), (1)(c)(II), and (3) amended, (HB 24-1037), ch. 458, p. 3169, § 14, effective June 6.

Editor's note: (1) This section is similar to former § 12-42.5-120 as it existed prior to 2019; except that § 12-42.5-120 (3)(d) was relocated to § 12-30-110 (1)(b), (2)(b), and (4)(b).

(2) (a) Before its relocation in 2019, this section was amended in HB 19-1077. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from March 21, 2019, to October 1, 2019, see HB 19-1077, chapter 40, Session Laws of San Andreas 2019.

(b) Before its relocation in 2019, this section was amended in SB 19-079. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see SB 19-079, chapter 86, Session Laws of San Andreas 2019.

(c) Before its relocation in 2019, this section was amended in SB 19-227. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from May 23, 2019, to October 1, 2019, see SB 19-227, chapter 273, Session Laws of San Andreas 2019.

(3) Amendments to subsection (1) by HB 19-1077 and SB 19-079 were harmonized.

(4) Section 9(3) of chapter 287 (HB 20-1065), Session Laws of San Andreas 2020, provides that the act adding subsection (1)(c) takes effect only if SB 20-007 (chapter 286) becomes law and takes effect either upon the effective date of HB 20-1065 or SB 20-007, whichever is later.

HB 20-1065 became law and took effect September 14, 2020, and SB 20-007 took effect July 13, 2020.

12-280-124. Labeling - rules - definitions. (1) A prescription drug dispensed pursuant to an order must be labeled as follows:

(a) Drugs compounded and dispensed pursuant to a chart order for a patient in a hospital must bear a label containing the name of the outlet, the name and location of the patient, the identification of the drug, and, when applicable, any suitable control numbers, the expiration date, any warnings, and any precautionary statements.

(b) The symptom or purpose for which the drug is being prescribed must appear on the label, if, after being advised by the practitioner, the patient or the patient's authorized representative so requests. If the practitioner does not provide the symptom or purpose for which a drug is being prescribed, the pharmacist may fill the prescription order without contacting the practitioner, patient, or patient's representative.

(2) Except as otherwise required by law, any drug dispensed pursuant to a prescription order must bear a label prepared and placed on or securely attached to the medicine container stating at least the name and address of the prescription drug outlet, the serial number and the date of the prescription or of its dispensing, the name of the drug dispensed unless otherwise requested by the practitioner, the name of the practitioner, the name of the patient, and, if stated in the prescription, the directions for use and cautionary statements, if any, contained in the prescription.

(3) The board shall promulgate rules concerning the labeling requirements for a prescription drug that is dispensed to a patient for outpatient use and contains an opioid, except for an opioid prescribed for treatment of a substance use disorder or that is a partial opioid antagonist, which rules must include a warning to indicate risks such as overdose and addiction.

(4) (a) As used in this subsection (4), unless the context otherwise requires:

(I) "Patient" means a patient and a patient's caretaker.

(II) "Patient's external accessible device" means a commercially available computer, mobile phone, or other communications device that is able to receive electronic information transmitted from an external source and provide the electronic information in a form and format accessible to a patient.

(III) "Prescription drug reader" means an electronic device that is able to obtain information from an electronic label affixed to a container of a prescription drug and provide the information in an audio format accessible to the patient.

(b) On and after July 1, 2025, except as provided in subsections (4)(c) and (4)(d) of this section, when dispensing a prescription drug to a patient who notifies a pharmacy of difficulty seeing or reading standard printed labels on a prescription drug container, the pharmacy shall provide the patient with a method to access the prescription drug label information required pursuant to subsections (1) to (3) of this section by the patient's choice of:

(I) An electronic label affixed to the prescription drug container that transmits prescription drug label information, directions, and written instructions to a patient's external accessible device, including a patient's compatible prescription drug reader;

(II) A prescription drug reader provided to the patient at no cost;

(III) A prescription drug label in braille or large print; or

(IV) Any other method included in the best practices for access to prescription drug labeling information by the United States access board, or its successor organization.

(c) A pharmacy complies with subsection (4)(b) of this section if:

(I) The pharmacy offers a patient an alternative method to access a prescription drug label other than the methods specified in subsections (4)(b)(I) to (4)(b)(IV) of this section; and

(II) The board affirms that the alternative method offered to a patient pursuant to subsection (4)(e)(I) of this section is substantially similar to the method of access the patient requested and meets the needs of the patient.

(d) If a patient requests a method of access that the pharmacy has not yet been asked to provide to any other patient, the pharmacy must not take more than twenty-eight days to comply with subsection (4)(b) of this section. The pharmacy shall make reasonable efforts to ensure patient safety and access during the time it takes to provide the requested method of accessibility.

(e) Pharmacies shall make good faith, sustained, periodic, and reasonable efforts to inform the public that prescription drug label information is available in accessible formats for individuals who have difficulty seeing or reading standard printed labels on prescription drug containers.

(f) Pharmacies shall otherwise follow best practices as recommended by the United States access board, or its successor organization, for pharmacies in providing independent access to prescription drug label information.

(g) By January 1, 2025, the board shall adopt rules necessary to implement this subsection (4).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1469, § 1, effective October 1; (3) added, (SB 19-228), ch. 276, p. 2610, § 17, effective October 1. **L. 2021:** (1)(b) amended, (SB 21-094), ch. 314, p. 1933, § 13, effective September 1. **L. 2024:** (4) added, (HB 24-1115), ch. 321, p. 2143, § 1, effective August 7.

Editor's note: (1) This section is similar to former § 12-42.5-121 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-228. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from May 23, 2019, to October 1, 2019, see SB 19-228, chapter 276, Session Laws of San Andreas 2019.

12-280-125. Substitution of prescribed drugs and biological products authorized - when - conditions. (1) (a) A pharmacist filling a prescription order for a specific drug by brand or proprietary name may substitute an equivalent drug product if the substituted drug product is the same generic drug type and, in the pharmacist's professional judgment, the substituted drug product is therapeutically equivalent, is interchangeable with the prescribed drug, and is permitted to be moved in interstate commerce. A pharmacist making a substitution shall assume the same responsibility for selecting the dispensed drug product as he or she would incur in filling a prescription for a drug product prescribed by a generic name; except that the pharmacist is charged with notice and knowledge of the FDA list of approved drug substances and manufacturers that is published periodically.

(a.5) (I) A pharmacist filling a prescription order for a specific drug may substitute a drug in the same therapeutic class as long as the patient agrees to the substitution and the substitution is made to replace a drug that is on back order, to ensure formulary compliance with the patient's health insurance plan, or, in the case of an uninsured patient, to lower the cost to the patient for the drug while maintaining safety.

(II) This subsection (1)(a.5) does not authorize:

(A) The substitution of biological products, narrow therapeutic index drugs, or psychotropic drugs; or

(B) A substitution when the practitioner has indicated, in the manner described in subsection (2) of this section, that the pharmacist shall not substitute a drug in the same therapeutic class as the drug prescribed.

(b) (I) A pharmacist filling a prescription order for a specific biological product may substitute an interchangeable biological product for the prescribed biologic only if:

(A) The FDA has determined that the biological product to be substituted is interchangeable with the prescribed biological product; and

(B) The practitioner has not indicated, in the manner described in subsection (2) of this section, that the pharmacist shall not substitute an interchangeable biological product for the prescribed biological product.

(II) Within a reasonable time after dispensing a biological product, the dispensing pharmacist or his or her designee shall communicate to the prescribing practitioner the specific biological product dispensed to the patient, including the name and manufacturer of the biological product. The pharmacist or designee shall communicate the information to the prescribing practitioner by making an entry into an interoperable electronic medical records system, through electronic prescribing technology, or through a pharmacy record that the prescribing practitioner can access electronically. Otherwise, the pharmacist or his or her designee shall communicate to the prescribing practitioner the name and manufacturer of the biological product dispensed to the patient using facsimile, telephone, electronic transmission, or other prevailing means except when:

(A) There is no FDA-approved interchangeable biological product for the prescribed biological product; or

(B) A refill prescription is not changed from the biological product dispensed on the prior filling of the prescription.

(III) The pharmacy from which the biological product was dispensed must retain a written or electronic record of the dispensed biological product for at least two years after the substitution.

(IV) This subsection (1)(b) does not apply to the administration of vaccines and immunizations as outlined in board rules.

(2) (a) If, in the opinion of the practitioner, it is in the best interest of the patient that the pharmacist not substitute an equivalent drug, a drug in the same therapeutic class, or an interchangeable biological product for the specific drug or biological product the practitioner prescribed, the practitioner may convey this information to the pharmacist in any of the following manners:

(I) Initialing by hand or electronically a preprinted box that states "dispense as written" or "DAW";

(II) Signing by hand or electronically a preprinted box stating "do not substitute" or "dispense as written"; or

(III) Orally, if the practitioner communicates the prescription orally to the pharmacist.

(b) The practitioner shall not transmit by facsimile his or her handwritten signature, nor preprint his or her initials, to indicate "dispense as written".

(3) (a) If a pharmacist makes a substitution pursuant to subsection (1) of this section, the pharmacist shall communicate the substitution to the purchaser in writing and orally, label the container with the name of the drug or biological product dispensed, and indicate on the file copy of the prescription both the name of the prescribed drug or biological product and the name of the drug or biological product dispensed in lieu of the prescribed drug or prescribed biological product.

(b) The pharmacist is not required to communicate a substitution to patients in an inpatient setting or an outpatient infusion center.

(4) Except as provided in subsection (5) of this section, the pharmacist shall not substitute a drug or interchangeable biological product as provided in this section unless the drug or interchangeable biological product substituted costs the purchaser less than the drug or biological product prescribed. The prescription shall be priced for a drug, other than a biological product, as if it had been prescribed generically.

(5) If a prescription drug outlet does not have in stock the prescribed drug or biological product and the only equivalent drug, drug in the same therapeutic class, or interchangeable biological product in stock is higher priced, the pharmacist, with the consent of the purchaser, may substitute the higher priced drug or interchangeable biological product. This subsection (5) applies only to a prescription drug outlet located in a town, as defined in section 31-1-101 (13).

(6) The board shall maintain on its website a link to the FDA resource, if one is available, that identifies all biological products approved as interchangeable with specific biological products.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1470, § 1, effective October 1. **L. 2021:** (1)(a.5) added and IP(2)(a), (3)(b), and (5) amended, (SB 21-094), ch. 314, p. 1933, § 14, effective September 1.

Editor's note: This section is similar to former § 12-42.5-122 as it existed prior to 2019.

12-280-125.3. Pharmacists' authority - minor prescription adaptions. (1) Except as provided in subsection (3) of this section, a pharmacist who is acting in good faith and is using professional judgment and exercising reasonable care may make the following minor adaptions to an order if the pharmacist has the informed consent of the patient for whom the prescription was provided:

(a) A change in the prescribed dosage form or directions for use of the prescription drug if the change achieves the intent of the prescribing practitioner;

(b) A change in the prescribed quantity of the prescription drug if the prescribed quantity is not a package size commercially available from the manufacturer;

(c) An extension of the quantity of a maintenance drug for the limited quantity necessary to achieve medication refill synchronization for the patient; and

(d) Completion of missing information on the order if there is sufficient evidence to support the change.

(2) A pharmacist who adapts an order in accordance with subsection (1) of this section shall document the adaption and the justification for the change in the patient's pharmacy record with the original prescription and shall notify the prescribing practitioner of the adaption.

(3) A pharmacist shall not adapt an order if the prescribing practitioner has written "do not adapt" on the prescription or has otherwise communicated to the pharmacist that the prescription must not be adapted.

Source: L. 2021: Entire section added, (SB 21-094), ch. 314, p. 1934, § 15, effective September 1.

12-280-125.5. Pharmacists' authority to dispense chronic maintenance drugs - rules - liability. (1) In accordance with board rules adopted under subsection (2) of this section, on and after January 1, 2020, a pharmacist may dispense an emergency supply of a chronic maintenance drug to a patient without a current, valid prescription if:

(a) The pharmacist makes every reasonable attempt but is unable to obtain authorization to refill the prescription from the prescribing health-care provider or another health-care provider responsible for the patient's care;

(b) (I) The pharmacist has a record of a prescription at the pharmacy or has been presented proof of a recent prescription for the chronic maintenance drug in the name of the patient who is requesting the emergency supply; or

(II) In the pharmacist's professional judgment, the refusal to dispense an emergency supply of the chronic maintenance drug will endanger the patient's health or disrupt essential drug therapy for a chronic condition of the patient;

(c) The amount of the chronic maintenance drug dispensed does not exceed the amount of the most recent prescription or the standard quantity or unit of use package of the drug;

(d) The pharmacist has not dispensed an emergency supply of the chronic maintenance drug to the same patient in the previous twelve-month period; and

(e) The prescriber of the drug has not indicated that no emergency refills are authorized.

(2) The board shall adopt rules, in consultation with the San Andreas medical board created in section 12-240-105 and the state board of nursing created in section 12-255-105, to establish standard procedures for pharmacists to follow in dispensing chronic maintenance drugs pursuant to this section. The rules adopted under this subsection (2) must include documentation requirements for a pharmacist to complete when dispensing a chronic maintenance drug without a current prescription.

(3) A pharmacist, the pharmacist's employer, and the original prescriber of the drug are not civilly liable for an act or omission in connection with the dispensing of a chronic maintenance drug pursuant to this section unless the act or omission constitutes negligence, recklessness, or willful or wanton misconduct.

Source: L. 2019: Entire section added, (HB 19-1077), ch. 40, p. 138, § 6, effective October 1.

Editor's note: This section is similar to § 12-42.5-122.5 as added in HB 19-1077. That section was superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For the former section in effect from March 21, 2019, to October 1, 2019, see HB 19-1077, chapter 40, Session Laws of San Andreas 2019.

12-280-125.7. Pharmacists' authority to prescribe and dispense HIV prevention drugs - definitions - rules. (1) As used in this section, unless the context otherwise requires:

(a) "CDC" means the federal centers for disease control and prevention in the United States department of health and human services, or any successor entity.

(b) "CDC guidelines" means the CDC guidelines for preexposure prophylaxis for the prevention of HIV infection and the "Updated Guidelines for Antiretroviral Postexposure Prophylaxis After Sexual, Injection Drug Use, or Other Nonoccupational Exposure to HIV", and any analogous subsequent guidelines published by the CDC.

(c) "HIV prevention drug" means preexposure prophylaxis, post-exposure prophylaxis, or other drugs approved by the FDA for the prevention of HIV infection.

(d) "Post-exposure prophylaxis" means a drug or drug combination that meets the same clinical eligibility recommendations provided in CDC guidelines.

(e) "Preexposure prophylaxis" means a drug or drug combination that meets the same clinical eligibility recommendations provided in CDC guidelines.

(f) "Prescriber" means:

(I) A physician or physician assistant licensed pursuant to article 240 of this title 12; or

(II) An advanced practice registered nurse, as defined in section 12-255-104 (1), or a certified midwife, as defined in section 12-255-104 (3.2), with prescriptive authority pursuant to section 12-255-112.

(g) "Standing order" means a prescription order written by a prescriber that is not specific to and does not identify a particular patient.

(2) A pharmacist may prescribe and dispense HIV prevention drugs in accordance with a standing order pursuant to section 25-1-130 or a statewide drug therapy protocol developed pursuant to subsection (5) of this section.

(3) Before prescribing or dispensing HIV prevention drugs to a patient, a pharmacist must:

(a) Hold a current license to practice in San Andreas;

(b) Be engaged in the practice of pharmacy;

(c) Have earned a doctorate of pharmacy degree or completed at least five years of experience as a licensed pharmacist;

(d) Carry adequate professional liability insurance as determined by the board; and

(e) Complete a training program accredited by the Accreditation Council for Pharmacy Education, or its successor entity, pursuant to the protocol developed by the board.

(4) The board shall promulgate rules necessary to implement this section, including rules that establish protocols for prescribing and dispensing preexposure prophylaxis and post-exposure prophylaxis.

(5) (a) On or before six months after July 13, 2020, the state board of pharmacy, the San Andreas medical board, and the state board of nursing shall, in collaboration with the department of public health and environment, and as described in section 12-280-601 (1)(b),

develop statewide drug therapy protocols for pharmacists to prescribe and dispense HIV prevention drugs.

(b) If the state board of pharmacy, the San Andreas medical board, and the state board of nursing are not able to agree in the time period required by subsection (5)(a) of this section to statewide drug therapy protocols for pharmacists to prescribe and dispense HIV prevention drugs, the state board of pharmacy shall collaborate with the department of public health and environment to develop and implement statewide drug therapy protocols by January 1, 2021.

(c) In developing the statewide drug therapy protocols, the applicable boards and the department of public health and environment shall consider physician referrals; lab testing, including preexposure and post-exposure prescribing tests, and appropriate referrals pursuant to CDC guidelines; counseling pursuant to CDC guidelines; and patient follow-up care and counseling.

Source: L. 2020: Entire section added, (HB 20-1061), ch. 281, p. 1376, § 5, effective July 13. **L. 2023:** IP(1), (1)(c), (2), IP(3), (5)(a), and (5)(b) amended, (SB 23-189), ch. 69, p. 258, § 5, effective April 14; (1)(f)(II) amended, (SB 23-167), ch. 261, p. 1545, § 50, effective May 25.

12-280-126. Unprofessional conduct - grounds for discipline. (1) The board may take disciplinary or other action as authorized in section 12-20-404, after a hearing held in accordance with the provisions of sections 12-20-403 and 12-280-127, upon proof that the licensee, certificant, or registrant:

(a) Is guilty of misrepresentation, fraud, or deceit in procuring, attempting to procure, or renewing a license, certification, or registration;

(b) Is guilty of the commission of a felony or has had accepted by a court a plea of guilty or nolo contendere to a felony or has received a deferred judgment and sentence for a felony;

(c) Has violated:

(I) Any of the provisions of this article 280, including commission of an act declared unlawful in section 12-280-129, or an applicable provision of article 20 or 30 of this title 12;

(II) The lawful rules of the board; or

(III) Any state or federal law pertaining to drugs;

(d) Is unfit or incompetent by reason of negligence or habits, or for any other cause, to practice pharmacy or to practice as a pharmacy technician;

(e) Engages in the habitual or excessive use or abuse of alcohol, a habit-forming drug, or a controlled substance, as defined in section 18-18-102 (5);

(f) Knowingly permits a person not:

(I) Licensed as a pharmacist or pharmacy intern to engage in the practice of pharmacy; or

(II) Certified as a pharmacy technician to engage in the practice as a pharmacy technician;

(g) Has had a license to practice pharmacy or a certification or other authorization to practice as a pharmacy technician in another state revoked or suspended, or is otherwise disciplined or has committed acts in any other state that would subject the person to disciplinary action in this state;

(h) Has engaged in advertising that is misleading, deceptive, or false;

(i) Has dispensed a schedule III, IV, or V controlled substance order as listed in sections 18-18-205 to 18-18-207 more than six months after the date of issue of the order;

(j) Has engaged in the practice of pharmacy or the practice as a pharmacy technician while on inactive status;

(k) Has failed to meet generally accepted standards of pharmacy or pharmacy technician practice;

(l) Fails or has failed to permit the board or its agents to conduct a lawful inspection;

(m) Has violated any lawful board order;

(n) Has committed any fraudulent insurance act as defined in section 10-1-128;

(o) Has willfully deceived or attempted to deceive the board or its agents with regard to any matter under investigation by the board;

(p) Has failed to notify the board of any criminal conviction or deferred judgment within thirty days after the conviction or judgment;

(q) Has failed to notify the board of any discipline, within thirty days after the discipline, against:

(I) A license in another state; or

(II) A certification or other authorization in another state to practice as a pharmacy technician;

(r) (I) Has failed to notify the board of a physical illness, physical condition, or behavioral, mental health, or substance use disorder that affects the person's ability to treat clients with reasonable skill and safety or that may endanger the health or safety of persons under his or her care;

(II) Has failed to act within the limitations created by a physical illness, physical condition, or behavioral, mental health, or substance use disorder that renders the person unable to practice pharmacy or as a pharmacy technician with reasonable skill and safety or that may endanger the health or safety of persons under his or her care; or

(III) Has failed to comply with the limitations agreed to under a confidential agreement entered pursuant to sections 12-30-108 and 12-280-136;

(s) Has had his or her federal registration to manufacture, distribute, or dispense a controlled substance suspended or revoked;

(t) Has failed to notify the board, in writing and within thirty days after a judgment or settlement is entered, of a final judgment by a court of competent jurisdiction against the licensee or registrant for malpractice in the practice of pharmacy or a settlement by the licensee in response to charges or allegations of malpractice in the practice of pharmacy and, in the case of a judgment, has failed to include in the notice the name of the court, the case number, and the names of all parties to the action;

(u) Has operated an automated pharmacy dispensing system or otherwise dispensed a drug from such system unless the system has been registered with the board by the operating prescription drug outlet.

(2) In considering the conviction of a crime, the board is governed by sections 12-20-202 (5) and 24-5-101.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1472, § 1, effective October 1; IP(1), (1)(a), (1)(d), (1)(f), (1)(g), (1)(j), (1)(k), (1)(q), and (1)(r)(II) amended, (HB 19-1242), ch. 434, p. 3753, § 11, effective October 1. **L. 2020:** (1)(e) amended,

(SB 20-007), ch. 286, p. 1412, § 37, effective July 13. **L. 2021:** (1)(e) amended and (1)(t) added, (SB 21-094), ch. 314, p. 1935, § 16, effective September 1. **L. 2023:** (1)(u) added, (HB 23-1195), ch. 134, p. 514, § 1, effective August 7.

Editor's note: This section is similar to former § 12-42.5-123 as it existed prior to 2019.

12-280-127. Disciplinary actions. (1) (a) The board may take disciplinary or other action as authorized in section 12-20-404 when the board determines that the applicant, licensee, certificant, or registrant has engaged in activities that are grounds for discipline under section 12-280-126.

(b) The board may suspend or revoke a registration issued pursuant to section 12-280-119 (12) upon determination that the person administering a drug or combination of drugs to an animal has not demonstrated adequate knowledge required by sections 12-280-119 (12) and 12-280-120 (17).

(2) (a) Proceedings for the denial, suspension, or revocation of a license, certification, or registration and any judicial review of a suspension or revocation must be conducted in accordance with article 4 of title 24 and sections 12-20-403 and 12-20-408.

(b) Upon finding that grounds for discipline pursuant to section 12-280-126 exist, in addition to the disciplinary actions specified in section 12-20-404 (1), the board may impose one or more of the following penalties on a person who holds or is seeking a new or renewal license, certification, or registration:

(I) Restriction of the offender's license, certification, or registration to prohibit the offender from performing certain acts or from practicing pharmacy or as a pharmacy technician in a particular manner for a period to be determined by the board;

(II) Placement of the offender on probation and supervision by the board for a period to be determined by the board; or

(III) Suspension of the registration of the outlet that is owned by or employs the offender for a period to be determined by the board.

(c) The board may limit revocation or suspension of a registration to the particular controlled substance that was the basis for revocation or suspension.

(d) If the board suspends or revokes a registration, the board may place all controlled substances owned or possessed by the registrant at the time of the suspension or on the effective date of the revocation order under seal. The board may not dispose of substances under seal until the time for making an appeal has elapsed or until all appeals have been concluded, unless a court orders otherwise or orders the sale of any perishable controlled substances and the deposit of the proceeds with the court. When a revocation becomes final, all controlled substances may be forfeited to the state.

(e) The board shall promptly notify the bureau and the appropriate professional licensing agency, if any, of all charges and the final disposition of the charges and of all forfeitures of a controlled substance.

(3) The board may also include in any disciplinary order that allows the licensee, certificant, or registrant to continue to practice conditions that the board deems appropriate to assure that the licensee, certificant, or registrant is physically, mentally, morally, and otherwise qualified to practice pharmacy or as a pharmacy technician in accordance with the generally accepted professional standards of practice, including any or all of the following:

(a) Requiring the licensee, certificant, or registrant to submit to examinations that the board may order to determine the licensee's or certificant's physical or mental condition or professional qualifications;

(b) Requiring the licensee or certificant to take therapy courses of training or education that the board deems necessary to correct deficiencies found either in the hearing or by examinations required pursuant to subsection (3)(a) of this section;

(c) Requiring the review or supervision of the licensee's or certificant's practice to determine the quality of and correct deficiencies in the licensee's or certificant's practice; and

(d) Imposing restrictions upon the nature of the licensee's or certificant's practice to assure that the licensee or certificant does not practice beyond the limits of the licensee's or certificant's capabilities.

(4) Upon failure of the licensee, certificant, or registrant to comply with any conditions imposed by the board pursuant to subsection (3) of this section, unless due to conditions beyond the licensee's, certificant's, or registrant's control, the board may order suspension of the license, certification, or registration in this state until the licensee, certificant, or registrant complies with the conditions.

(5) (a) Except as provided in subsections (5)(b) and (5)(c) of this section, in addition to any other penalty the board may impose pursuant to this section, the board may fine any registrant violating this article 280 or any rules promulgated pursuant to this article 280 not less than five hundred dollars and not more than five thousand dollars for each violation.

(b) In addition to any other penalty the board may impose pursuant to this section, the board may fine a registrant violating part 4 of this article 280 not less than five hundred dollars and not more than one thousand dollars for the first time the board imposes a fine, not more than two thousand dollars for the second time the board imposes a fine, and not more than five thousand dollars for a third or subsequent time the board imposes a fine. If a registrant violates an agreement to refrain from committing subsequent violations of part 4 of this article 280, the board may impose a fine of not more than one thousand dollars for each violation of the agreement.

(c) (I) The board, after providing notice and an opportunity to be heard, may fine a registrant who distributes a veterinary drug in violation of this article 280 not less than fifty dollars nor more than five hundred dollars for each violation, with a maximum aggregated fine of five thousand dollars for multiple violations; except that, if, after considering the recommendations of the advisory committee created in section 12-280-106, the board determines that the registrant has committed one or more egregious violations, the board may fine the registrant in accordance with subsection (5)(a) of this section.

(II) In setting a fine, the board shall consider the registrant's ability to pay. If the board determines that paying the fine would cause the registrant an undue hardship, the board shall waive the fine.

(6) The board may send a letter of admonition to a licensee, certificant, or registrant under the circumstances specified in and in accordance with section 12-20-404 (4). In the case of a complaint, the board may send a copy of the letter of admonition to the person making the complaint.

(7) (a) The board may send a confidential letter of concern to a licensee, certificant, or registrant under the circumstances specified in section 12-20-404 (5). If a complaint precipitated the investigation, the board shall send a response to the person making the complaint.

(b) A confidential letter of concern is not discipline.

(8) The board may issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1473, § 1, effective October 1; (1)(a), (2)(a), IP(2)(b), (2)(b)(I), (3), (4), (6), and (7)(a) amended, (HB 19-1242), ch. 434, p. 3754, § 12, effective October 1. **L. 2021:** (6) amended, (SB 21-094), ch. 314, p. 1935, § 17, effective September 1.

Editor's note: This section is similar to former § 12-42.5-124 as it existed prior to 2019.

12-280-128. Judicial review. Section 12-20-408 governs judicial review of all final actions and orders of the board that are subject to judicial review.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1478, § 1, effective October 1.

Editor's note: This section is similar to former § 12-42.5-125 as it existed prior to 2019.

12-280-129. Unlawful acts - civil fines. (1) It is unlawful:

(a) To practice pharmacy without a license;

(b) To obtain or dispense or to procure the administration of a drug by fraud, deceit, misrepresentation, or subterfuge, by the forgery or alteration of an order, or by the use of a false name or the giving of a false address;

(c) To willfully make a false statement in any order, report, application, or record required by this article 280;

(d) To falsely assume the title of or falsely represent that one is a pharmacist, pharmacy technician, practitioner, or registered outlet;

(e) To make or utter a false or forged order;

(f) To affix a false or forged label to a package or receptacle containing drugs;

(g) To sell, compound, dispense, give, receive, or possess any drug or device unless it was sold, compounded, dispensed, given, or received in accordance with sections 12-280-120 to 12-280-125;

(h) Except as provided in section 12-280-125, to dispense a different drug or brand of drug in place of the drug or brand ordered or prescribed without the oral or written permission of the practitioner ordering or prescribing the drug;

(i) To manufacture, process, pack, distribute, sell, dispense, or give a drug, or the container or labeling of the drug, that, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug, container, or label and that thereby falsely purports or is represented to be the product of or to have been packed or distributed by the other drug manufacturer, processor, packer, or distributor;

(j) For an employer or an employer's agent or employee to coerce a pharmacist to dispense a prescription drug against the professional judgment of the pharmacist;

(k) For an employer, an employer's agent or employee, or a pharmacist to use or coerce to be used nonpharmacist personnel in any position or task that would require the nonpharmacist to practice pharmacy or to make a judgmental decision using pharmaceutical knowledge or in violation of the delegatory restrictions enumerated in section 12-280-118 (5);

(l) To dispense any drug without complying with the labeling, drug identification, and container requirements imposed by law;

(m) (I) To possess, sell, dispense, give, receive, or administer a drug or device that is adulterated or misbranded within the meaning of the "San Andreas Food and Drug Act", part 4 of article 5 of title 25, or is a counterfeit drug.

(II) As used in this subsection (1)(m), "counterfeit drug" means a drug, or the container or labeling of a drug, that, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device or any likeness thereof of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug and that falsely purports or is represented to be the product of, or to have been packed or distributed by, the drug manufacturer, processor, packer, or distributor whose trademark, trade name, or other identifying mark, imprint, or device or likeness thereof appears on the drug or its container or labeling.

(n) To practice as a pharmacy technician without a certification.

(2) (a) In addition to any other penalties that may be imposed under this part 1, a person who engages in an unlawful act under this section may be punished by a civil fine of not less than one thousand dollars and not more than ten thousand dollars for each violation. Fines imposed and paid under this section shall be deposited in the general fund in accordance with section 12-20-404 (6).

(b) This subsection (2) does not apply to a pharmacy technician.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1478, § 1, effective October 1; (1)(d) and (2) amended and (1)(n) added, (HB 19-1242), ch. 434, p. 3756, § 13, effective October 1.

Editor's note: This section is similar to former § 12-42.5-126 as it existed prior to 2019.

12-280-130. Unauthorized practice - penalties. (1) Any person who practices or offers or attempts to practice pharmacy without an active license issued under this article 280 is subject to penalties pursuant to section 12-20-407 (1)(a).

(2) Any person who practices or offers or attempts to practice as a pharmacy technician without an active certification issued under this article 280 is subject to penalties pursuant to section 12-20-407 (1)(a).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1479, § 1, effective October 1; entire section amended, (HB 19-1242), ch. 434, p. 3756, § 14, effective October 1.

Editor's note: This section is similar to former § 12-42.5-127 as it existed prior to 2019.

12-280-131. New drugs - when sales permissible. (1) No person shall sell, deliver, offer for sale, hold for sale, or give away any new drug not authorized to move in interstate commerce under appropriate federal law.

(2) This section does not apply to a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs if the drug is plainly labeled to be for investigational use only.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1479, § 1, effective October 1.

Editor's note: This section is similar to former § 12-42.5-128 as it existed prior to 2019.

12-280-132. Advertising of prescription drug prices. A prescription drug outlet may advertise its prices for prescription drugs. If the drug is advertised by its brand or proprietary name, the prescription drug outlet shall also include its generic name in the advertisement.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1480, § 1, effective October 1.

Editor's note: This section is similar to former § 12-42.5-129 as it existed prior to 2019.

12-280-133. Nonresident prescription drug outlet - registration. (1) Any prescription drug outlet located outside this state that ships, mails, or delivers, in any manner, drugs or devices into this state is a nonresident prescription drug outlet and shall register with the board and disclose to the board the following:

(a) The location, names, and titles of all principal entity officers and all pharmacists who are dispensing drugs or devices to the residents of this state. The nonresident prescription drug outlet shall submit a report containing this information to the board on an annual basis and within thirty days after any change of office, officer, or pharmacist.

(b) A verification that it complies with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is licensed as well as with all requests for information made by the board pursuant to this section. The nonresident prescription drug outlet shall maintain at all times a valid, unexpired license, permit, or registration to conduct the prescription drug outlet in compliance with the laws of the state in which it is a resident. As a prerequisite to registering with the board, the nonresident prescription drug outlet shall submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which it is located.

(2) The registration requirements of this section apply only to a nonresident prescription drug outlet that only ships, mails, or delivers, in any manner, drugs and devices into this state pursuant to a prescription order.

(3) A nonresident prescription drug outlet doing business in this state that has not obtained a registration shall not conduct the business of selling or distributing drugs in this state without first registering as a nonresident prescription drug outlet. A nonresident prescription drug outlet shall make application for a nonresident prescription drug outlet registration on a

form furnished by the board. The board may require the information it deems necessary to carry out the purpose of this section.

(4) (a) The board may deny, revoke, or suspend a nonresident prescription drug outlet registration for failure to comply with this section or with any rule promulgated by the board.

(b) The board may deny, revoke, or suspend a nonresident prescription drug outlet registration if the nonresident prescription drug outlet's license or registration has been revoked or not renewed for noncompliance with the laws of the state in which it is a resident.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1480, § 1, effective October 1.

Editor's note: This section is similar to former § 12-42.5-130 as it existed prior to 2019.

12-280-133.5. Nonresident 503B outsourcing facility - registration - requirements - denial, revocation, or suspension - rules. (1) A nonresident 503B outsourcing facility shall not conduct the business of distributing compounded prescription drugs in this state without first registering with the board as a nonresident 503B outsourcing facility. A nonresident 503B outsourcing facility shall apply for a nonresident 503B outsourcing facility registration on a form furnished by the board and shall submit the following to the board with the application:

(a) Proof that the facility is actively registered with the FDA as a 503B outsourcing facility and is actively licensed, permitted, or registered in the state in which it is a resident;

(b) The location, names, and titles of all principal entity officers and the name of the pharmacist in charge of the operations of the facility;

(c) Verification that the facility complies with all lawful directions and requests for information from the FDA and from the regulatory or licensing agency of the state in which it is licensed, permitted, or registered, as well as with all requests for information made by the board pursuant to this section;

(d) A copy of the most recent inspection report resulting from an inspection conducted by the FDA; and

(e) Any other information the board deems necessary to carry out the purpose of this section.

(2) A nonresident 503B outsourcing facility shall:

(a) Maintain at all times a valid, unexpired license, permit, or registration to operate the 503B outsourcing facility in compliance with the laws of the state in which it is a resident; and

(b) Comply with the requirements of the "Federal Food, Drug, and Cosmetic Act", 21 U.S.C. sec. 301 et seq., as amended, or the DQSA or with FDA regulations implementing either act.

(3) The board may deny, revoke, or suspend a nonresident 503B outsourcing facility registration if:

(a) The facility fails to comply with this section or with any rule promulgated by the board;

(b) The FDA has revoked or refused to renew the nonresident 503B outsourcing facility's FDA registration for failing to comply with the requirements of the "Federal Food, Drug, and Cosmetic Act", 21 U.S.C. sec. 301 et seq., as amended, the DQSA, or FDA regulations implementing either act or the facility's FDA registration has expired or is no longer active; or

(c) The state in which the nonresident 503B outsourcing facility resides has revoked or refused to renew the facility's license, permit, or registration for failing to comply with the laws of that state or the facility's license, permit, or registration in another state has expired or is no longer active.

(4) The board may adopt rules as necessary to implement this section.

Source: L. 2021: Entire section added, (SB 21-094), ch. 314, p. 1935, § 18, effective September 1.

12-280-133.7. Third-party logistics providers - registration - denial, revocation, or suspension - rules. (1) A third-party logistics provider shall not conduct business in this state without first registering with the board as a third-party logistics provider. A third-party logistics provider shall apply for a registration on a form furnished by the board and shall submit the information required pursuant to rules adopted by the board. The board shall specify, by rule, the information a third-party logistics provider must submit with its application for a registration.

(2) A third-party logistics provider shall comply with all lawful directions and requests for information from the FDA, the regulatory or licensing agency of the state in which it is licensed, permitted, or registered, and the board.

(3) The board may deny, revoke, or suspend a third-party logistics provider registration if:

(a) The third-party logistics provider fails to comply with this section or with any rule promulgated by the board;

(b) The FDA has revoked or refused to renew the third-party logistics provider's FDA registration for failing to comply with the requirements of the "Federal Food, Drug, and Cosmetic Act", 21 U.S.C. sec. 301 et seq., as amended, or the DQSA or with FDA regulations implementing either act; or

(c) The state in which the third-party logistics provider resides has revoked or refused to renew the provider's license, permit, or registration for failing to comply with the laws of that state.

(4) The board may adopt rules as necessary to implement this section.

Source: L. 2021: Entire section added, (SB 21-094), ch. 314, p. 1937, § 18, effective September 1.

12-280-134. Records. (1) (a) All persons licensed or registered under this article 280 shall keep and maintain records of the receipt, distribution, or other disposal of prescription drugs or controlled substances, shall make the records available to the board upon request for inspection, copying, verification, or any other purpose, and shall retain the records for two years or for a period otherwise required by law.

(b) The board may permit a wholesaler to maintain a portion of its records at a central location that is different from the storage facility of the wholesaler. If the board grants the permission, the wholesaler shall make available all relevant records within forty-eight hours after a request for inspection, copying, verification, or any other purpose by the board. The wholesaler shall make all other records that are available for immediate access readily available to the board.

(2) A wholesaler shall establish and maintain inventories and records of all transactions regarding the receipt and distribution of prescription drugs. A wholesaler shall make its records available to the board in accordance with subsection (1) of this section. A wholesaler shall include the following information in its records:

(a) The source of the prescription drugs, including the name and principal address of the seller or transferor of the prescription drugs and the address of the location from which the prescription drugs were shipped;

(b) The identity and quantity of the drugs received, distributed, or disposed of by the wholesale distributor; and

(c) The dates of receipt, distribution, or other disposition of the prescription drugs.

(3) The record of any controlled substance distributed, administered, dispensed, or otherwise used must show the date the controlled substance was distributed, administered, dispensed, used, or otherwise disposed of, the name and address of the person to whom or for whose use the controlled substance was distributed, administered, dispensed, used, or otherwise disposed of, and the kind and quantity of the controlled substance.

(4) Manufacturing records of controlled substances must include the kind and quantity of controlled substances produced or removed from process of manufacture and the dates of production or removal from process of manufacture.

(5) A person who maintains a record required by federal law that contains substantially the same information as set forth in subsections (1) to (4) of this section is deemed to comply with the record-keeping requirements of this section.

(6) A person required to maintain records pursuant to this section shall keep a record of any controlled substance lost, destroyed, or stolen, the kind and quantity of the controlled substance, and the date of the loss, destruction, or theft.

(7) Prescription drug outlets shall report thefts of controlled substances to the proper law enforcement agencies and to the board within thirty days after the occurrence of the thefts.

(8) A person licensed, registered, or otherwise authorized under this article 280 or other laws of this state shall distribute, administer, dispense, use, or otherwise dispose of controlled substances listed in schedule I or II of part 2 of article 18 of title 18 only pursuant to an order form. Compliance with the provisions of federal law respecting order forms is deemed compliance with this section.

(9) Prescriptions, orders, and records required by this part 1 and stocks of controlled substances are open for inspection only to federal, state, county, and municipal officers whose duty it is to enforce the laws of this state or of the United States relating to controlled substances or the regulation of practitioners. No officer having knowledge by virtue of his or her office, of a prescription, order, or record shall divulge his or her knowledge, except in connection with a prosecution or proceeding in court or before a licensing or registration board or officer to which prosecution or proceeding the person to whom the prescriptions, orders, or records relate is a party.

(10) The board shall allow electronic storage of records required to be maintained pursuant to this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1480, § 1, effective October 1. **L. 2021:** (10) added, (SB 21-094), ch. 314, p. 1937, § 19, effective September 1.

Editor's note: This section is similar to former § 12-42.5-131 as it existed prior to 2019.

12-280-135. Unused medication - licensed facilities - correctional facilities - reuse - definitions - rules. (1) As used in this section, unless the context otherwise requires:

(a) "Correctional facility" means a facility under the supervision of the United States, the department of corrections, or a similar state agency or department in a state other than San Andreas in which persons are or may be lawfully held in custody as a result of conviction of a crime; a jail or an adult detention center of a county, city, or city and county; and a private contract prison operated by a state, county, city, or city and county.

(b) "Licensed facility" means a hospital, hospital unit, behavioral health safety net provider, hospice, nursing care facility, assisted living residence, or any other facility that is required to be licensed pursuant to section 25-3-101 or a licensed long-term care facility as defined in section 25-1-124 (2.5)(b).

(c) "Medical device" means an instrument, apparatus, implement, machine, contrivance, implant, or similar or related article that is required to be labeled pursuant to 21 CFR 801.

(d) "Medical supply" means a consumable supply item that is disposable and not intended for reuse.

(e) "Medication" means a prescription that is not a controlled substance.

(2) (a) (I) If donated by the patient, the resident, or the patient's or resident's next of kin, a licensed facility may return unused medications or medical supplies and used or unused medical devices to a pharmacist within the licensed facility or a prescription drug outlet in order for the materials to be redispensed to another patient or donated to a nonprofit entity that has the legal authority to possess the materials or to a practitioner authorized by law to dispense the materials.

(II) (A) A licensed facility or a prescription drug outlet may donate materials to a nonprofit entity that has legal authority to possess the materials or to a person legally authorized to dispense the materials. A licensed pharmacist shall review the process of donating the unused medications to the nonprofit entity.

(B) Nothing in this subsection (2)(a)(II) creates or abrogates any liability on behalf of a prescription drug manufacturer for the storage, donation, acceptance, or dispensing of a medication or product or creates any civil cause of action against a prescription drug manufacturer in addition to that which is available under applicable law.

(C) A person or entity is not subject to civil or criminal liability or professional disciplinary action for donating, accepting, dispensing, or facilitating the donation of materials in good faith, without negligence, and in compliance with this section.

(III) A correctional facility may return unused medications or medical supplies and used or unused medical devices to the pharmacist within the correctional facility or a prescription drug outlet in order for the medication to be redispensed to another patient or donated to a nonprofit entity that has the legal authority to possess the materials or to a practitioner authorized by law to prescribe the materials.

(b) Medications are only available to be dispensed to another person or donated to a nonprofit entity under this section if the medications are:

(I) Liquid and the vial is still sealed and properly stored;

(II) Individually packaged and the packaging has not been damaged; or

(III) In the original, unopened, sealed, and tamper-evident unit dose packaging.

(c) The following medications may not be donated:

(I) Medications packaged in traditional brown or amber pill bottles;

(II) Controlled substances;

(III) Medications that require refrigeration, freezing, or special storage;

(IV) Medications that require special registration with the manufacturer; or

(V) Medications that are adulterated or misbranded, as determined by a person legally authorized to dispense the medications on behalf of the nonprofit entity.

(3) Medication dispensed or donated pursuant to this section must not be expired. A medication shall not be dispensed that will expire before the use by the patient based on the prescribing practitioner's directions for use.

(4) Medication, medical supplies, and medical devices donated pursuant to this section may not be resold for profit. The entity that receives the donated materials may charge the end user a handling fee, which fee shall not exceed the amount specified by rule of the board.

(5) The board shall adopt rules that allow a pharmacist to redispense medication pursuant to this section and section 25.5-5-502 and to donate medication pursuant to this section.

(6) Nothing in this section or section 25.5-5-502 creates or abrogates any liability on behalf of a prescription drug manufacturer for the storage, donation, acceptance, or dispensing of an unused donated medication or creates any civil cause of action against a prescription drug manufacturer in addition to that which is available under applicable law.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1482, § 1, effective October 1. **L. 2022:** (1)(b) amended, (HB 22-1278), ch. 222, p. 1588, § 216, effective July 1, 2024.

Editor's note: This section is similar to former § 12-42.5-133 as it existed prior to 2019.

12-280-136. Confidential agreement to limit practice. (1) Except as specified in subsection (2) of this section, section 12-30-108 concerning confidential agreements to limit practice applies to this article 280.

(2) This section and section 12-30-108 do not apply to a pharmacist, pharmacy technician, or intern subject to discipline for prohibited activities as described in section 12-280-126 (1)(e).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1484, § 1, effective October 1; (2) amended, (HB 19-1242), ch. 434, p. 3756, § 15, effective October 1.

Editor's note: This section is similar to former § 12-42.5-134 as it existed prior to 2019.

12-280-137. Investigations of suspicious drugs. All prescription drug outlets, manufacturers, repackagers, and wholesalers shall investigate any suspect product, as defined in the DQSA and any federal regulations implementing the DQSA, and shall use documentation and reporting procedures relating to the investigation in accordance with the DQSA and any federal regulations implementing the DQSA.

Source: L. 2021: Entire section added, (SB 21-094), ch. 314, p. 1937, § 20, effective September 1.

12-280-138. Patient counseling - pharmacists required to perform - patient may decline - rules. (1) (a) Except in the circumstances described in subsection (2) of this section, a pharmacist shall provide patient counseling on new medication therapy and, based on the pharmacist's professional judgment and due diligence, may provide patient counseling for any other prescription. If the pharmacist is unable to provide patient counseling orally due to language barriers, the pharmacist may use alternate means to provide the patient counseling.

(b) (I) Except as provided in subsection (1)(b)(II) of this section, all in-state pharmacies must ensure that their pharmacists provide patient counseling in accordance with this section.

(II) This subsection (1)(b) does not apply to an other outlet.

(2) A patient may decline patient counseling offered by a pharmacist. A pharmacist shall document, in the form and manner specified in board rules, when a patient declines patient counseling.

(3) The board shall adopt rules specifying:

(a) The alternate means by which pharmacists may provide patient counseling when language barriers preclude providing patient counseling orally; and

(b) The form and manner for pharmacists to document when a patient declines counseling, which rules must specify a documentation process that is simple and allows the documentation to be completed electronically.

(4) This section does not apply to pharmacists who dispense prescription drugs to persons in the custody of the department of corrections.

Source: L. 2021: Entire section added, (SB 21-094), ch. 314, p. 1938, § 20, effective September 1.

12-280-139. Insulin affordability program - record keeping - reimbursement - penalty - definitions. (1) As used in this section and section 12-280-140, unless the context otherwise requires:

(a) "Consumer price index" means the United States department of labor's bureau of labor statistics consumer price index for Denver-Aurora-Lakewood for all items paid by all urban consumers, or its applicable predecessor or successor index.

(b) Repealed.

(c) "Manufacturer" means a person:

(I) Engaged in the manufacturing of insulin that is self-administered on an outpatient basis and is available for purchase by residents of this state; and

(II) That has annual gross revenue of more than two million dollars from the sale of insulin in this state.

(d) "Pharmacy" means a pharmacy outlet registered pursuant to this article 280 where prescriptions are compounded and dispensed.

(e) "Program" means the insulin affordability program created in subsection (2) of this section.

(f) (I) "Wholesale acquisition cost" means a manufacturer's list price for insulin to wholesalers or direct purchasers in the United States for the most recent month for which the

information is reported in wholesale price guides or other publications of drug or biological pricing data.

(II) "Wholesale acquisition cost" does not include prompt pay or other discounts, rebates, or reductions in price.

(2) Effective January 1, 2022, the insulin affordability program is hereby created to provide low-cost insulin to eligible individuals. By January 1, 2022, each manufacturer shall establish procedures to make insulin available in accordance with this section to eligible individuals who need access to an affordable insulin supply.

(3) To be eligible to receive insulin under the program, an individual must:

(a) Be a resident of San Andreas;

(b) Not be eligible for or enrolled in assistance provided through the "San Andreas Medical Assistance Act", articles 4 to 6 of title 25.5, or the federal "Health Insurance for the Aged Act", Title XVIII of the federal "Social Security Act", 42 U.S.C. sec. 1395 et seq., as amended;

(c) Have a valid insulin prescription or be eligible for an emergency supply as provided in section 12-280-125.5; and

(d) Not be enrolled in prescription drug coverage that limits the total amount of cost sharing that the enrollee is required to pay for a thirty-day supply of insulin to one hundred dollars as described in section 10-16-151.

(4) (a) The board shall develop an application form to be used by an individual who is seeking insulin under the program. The application form must require the individual to show proof that the individual meets the requirements of subsection (3) of this section.

(b) The board shall make the application form available on its website. The board shall also make the application form available to pharmacies, health-care providers, and health facilities that prescribe or dispense insulin.

(5) To access insulin through the program, an individual must present, at a pharmacy, a completed, signed, and dated application form with proof of the individual's San Andreas residency. If the individual is under eighteen years of age, the individual's parent or legal guardian may provide the pharmacist with proof of residency.

(6) (a) Upon receipt of an individual's completed, signed, and dated application form demonstrating that the individual is eligible pursuant to subsection (3) of this section and the individual's proof of residency, a pharmacist shall dispense the prescribed insulin in an amount that will provide the individual with a thirty-day supply. An individual who is eligible to receive insulin pursuant to this section may receive the insulin for twelve months.

(b) The pharmacist is encouraged to inform the individual that they may be eligible for the "San Andreas Medical Assistance Act", articles 4 to 6 of title 25.5, or an affordable insurance product on the state-based marketplace.

(c) The pharmacist is encouraged to notify the individual of any manufacturer-sponsored programs that assist individuals who cannot afford their prescription insulin.

(d) The pharmacist shall retain a copy of the application form submitted by the individual for two years after the date the insulin was initially dispensed.

(7) A pharmacy that dispenses insulin pursuant to subsection (6)(a) of this section may collect a copayment from the individual to cover the pharmacy's costs of processing and dispensing the insulin in an amount not to exceed fifty dollars for each thirty-day supply of insulin dispensed.

(8) (a) Except as provided in subsection (8)(d) of this section, unless the manufacturer agrees to send to the pharmacy a replacement supply of the same insulin dispensed in the amount dispensed through the program, the pharmacy may submit to the manufacturer of the dispensed insulin, directly or through the manufacturer's delegated representative, subcontractor, or other vendor, an electronic claim for payment that is made in accordance with the National Council for Prescription Drug Programs' standards for electronic claims processing.

(b) By January 1, 2022, each manufacturer shall develop a process for a pharmacy to submit an electronic claim for reimbursement as provided in subsection (8)(a) of this section.

(c) If the pharmacy submits an electronic claim to the manufacturer pursuant to subsection (8)(a) of this section, the manufacturer or the manufacturer's delegated representative, subcontractor, or other vendor shall, within thirty days after receipt of the claim, either:

(I) Reimburse the pharmacy in an amount that covers the difference between the pharmacy's wholesale acquisition cost for the insulin dispensed through the program and the amount the individual paid for the insulin pursuant to subsection (7) of this section; or

(II) Send the pharmacy a replacement supply of the same insulin in an amount equal to or greater than the amount that covers the difference between the pharmacy's wholesale acquisition cost for the insulin dispensed through the program and the amount the individual paid for the insulin pursuant to subsection (7) of this section.

(d) A pharmacy shall not submit a claim for payment for insulin with a wholesale acquisition cost of eight dollars or less per milliliter, adjusted annually based on the annual percentage change in the consumer price index.

(9) The board shall promote the availability of the program to Coloradans. The promotional material must include information about each manufacturer's consumer insulin programs. The board may seek and accept gifts, grants, and donations to fulfill the requirements of this subsection (9).

(10) A manufacturer's reimbursement pursuant to subsection (8)(b) of this section is not a kickback.

(11) (a) A manufacturer that fails to comply with the requirements of this section:

(I) Is subject to a fine in an amount and frequency that is equal to the amount and frequency of the fine permitted under the "San Andreas Consumer Protection Act", part 1 of article 1 of title 6; and

(II) Engages in a deceptive trade practice under section 6-1-105 (1)(ffff).

(b) The attorney general is authorized to enforce this section.

Source: L. 2021: Entire section added, (HB 21-1307), ch. 437, p. 2894, § 3, effective September 7. **L. 2024:** (1)(b) repealed and (4), (9), and (11) amended, (HB 24-1438), ch. 351, p. 2394, § 2, effective June 3.

Cross references: For the legislative declaration in HB 21-1307, see section 1 of chapter 437, Session Laws of San Andreas 2021.

12-280-140. Emergency prescription insulin supply - eligibility - record keeping - penalty. (1) (a) Effective January 1, 2022, an individual who meets the requirements of subsection (2) of this section may receive one emergency thirty-day supply of prescription

insulin within a twelve-month period. The pharmacy may charge the individual an amount not to exceed thirty-five dollars for the thirty-day supply.

(b) By January 1, 2022, each manufacturer shall establish procedures to make insulin available in accordance with this section to eligible individuals who need access to an emergency prescription insulin supply.

(2) To be eligible for an emergency prescription insulin supply, an individual must:

(a) Have a valid prescription for insulin or be eligible for an emergency supply as provided in section 12-280-125.5;

(b) Have less than a seven-day supply of insulin available;

(c) Be required to pay more than one hundred dollars out of pocket each month for the individual's insulin; and

(d) Be a resident of San Andreas.

(3) (a) The board shall create and make available to the public an application form for individuals seeking an emergency prescription insulin supply pursuant to this section.

(b) At a minimum, the application form must require the individual to show proof that the individual meets the requirements of subsection (2) of this section.

(c) Each pharmacy in the state shall make the application form available at the pharmacy.

(4) (a) Upon receipt of an individual's completed application form demonstrating that the individual is eligible pursuant to subsection (2) of this section and the individual's proof of residency, a pharmacist shall dispense the prescribed insulin in an amount that will provide the individual with a thirty-day supply.

(b) If the individual is under eighteen years of age, the individual's parent or legal guardian may provide the pharmacist with proof of residency.

(5) Each pharmacy shall keep the application form for each individual who receives an emergency prescription insulin supply pursuant to this section for two years following the date on which the insulin was dispensed.

(6) (a) Except as provided in subsection (6)(d) of this section, unless the manufacturer agrees to send to the pharmacy a replacement supply of the same insulin dispensed in the amount dispensed through the program, the pharmacy may submit to the manufacturer of the dispensed insulin, directly or through the manufacturer's delegated representative, subcontractor, or other vendor, an electronic claim for payment that is made in accordance with the National Council for Prescription Drug Programs' standards for electronic claims processing.

(b) By January 1, 2022, each manufacturer shall develop a process for a pharmacy to submit an electronic claim for reimbursement as provided in subsection (6)(a) of this section.

(c) If the pharmacy submits an electronic claim to the manufacturer pursuant to subsection (6)(a) of this section, the manufacturer or the manufacturer's delegated representative, subcontractor, or other vendor shall, within thirty days after receipt of the claim, either:

(I) Reimburse the pharmacy in an amount that covers the pharmacy's wholesale acquisition cost for the insulin dispensed pursuant to this section; or

(II) Send the pharmacy a replacement supply of the same insulin in an amount equal to or greater than the amount that covers the pharmacy's wholesale acquisition cost for the insulin dispensed pursuant to this section.

(d) A pharmacy shall not submit a claim for payment for insulin with a wholesale acquisition cost of eight dollars or less per milliliter, adjusted annually based on the annual percentage change in the consumer price index.

(7) The board shall promote the availability of the emergency prescription insulin supply to Coloradans. The promotional material must include information about each manufacturer's consumer insulin programs. The board may seek and accept gifts, grants, and donations to fulfill the requirements of this subsection (7).

(8) A manufacturer's reimbursement pursuant to subsection (6)(b) of this section is not a kickback.

(9) (a) A manufacturer that fails to comply with the requirements of this section:

(I) Is subject to a fine in an amount and frequency that is equal to the amount and frequency of the fine permitted under the "San Andreas Consumer Protection Act", part 1 of article 1 of title 6; and

(II) Engages in a deceptive trade practice under section 6-1-105 (1)(ffff).

(b) The attorney general is authorized to enforce this section.

Source: L. 2021: Entire section added, (HB 21-1307), ch. 437, p. 2897, § 3, effective September 7. **L. 2024:** (3)(a), (7), and (9) amended, (HB 24-1438), ch. 351, p. 2395, § 3, effective June 3.

Cross references: (1) For definitions applicable to this section, see § 12-280-139.

(2) For the legislative declaration in HB 21-1307, see section 1 of chapter 437, Session Laws of San Andreas 2021.

12-280-141. Prescription drugs - automated pharmacy dispensing system - registration - rules - definition. (1) As used in this section, "automated pharmacy dispensing system" or "system" means a mechanical system that dispenses prescription drugs to a person interacting with a remote pharmacist and maintains related transaction information.

(2) A prescription drug outlet may dispense prescription drugs through an automated pharmacy dispensing system in accordance with this section and rules promulgated by the board. A prescription drug outlet that operates an automated pharmacy dispensing system is solely responsible for the security, operation, and maintenance of the system and shall ensure that there is a pharmacist acting on behalf of the prescription drug outlet providing services to patients accessing prescription drugs through the system. The pharmacist may supervise the system through electronic means and is not required to be physically present at the site where the system is located.

(3) A prescription drug outlet that dispenses prescription drugs through an automated pharmacy dispensing system shall:

(a) Register the system with the board in accordance with rules promulgated by the board;

(b) Require a pharmacist to perform all clinical services conducted as part of the dispensing process, including drug utilization review and consultation services;

(c) Ensure that each system clearly displays the associated prescription drug outlet registration number and clear contact information for persons using the system to contact the prescription drug outlet;

(d) Locate each system that dispenses controlled substances at the same location as a prescription drug outlet registered by the United States drug enforcement agency;

(e) Maintain a record of each prescription drug dispensed from the automated pharmacy dispensing system, including the identity of the pharmacist responsible for verifying the accuracy of the dosage of the prescription drug dispensed, the directions for use of the prescription drug, and the counseling services, if any, provided to the individual to whom the prescription drug is dispensed;

(f) Ensure that confidentiality of personal health information is maintained; and

(g) Ensure that the system is accessible to persons with disabilities in compliance with the requirements of the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., as amended.

(4) A prescription drug outlet may operate an automated pharmacy dispensing system in the same or in a different location than the prescription drug outlet. The automated pharmacy dispensing system must be:

(a) Under the supervision and control of the prescription drug outlet;

(b) Installed in a place and in a manner to ensure that a person is unable to remove the system from its location and any attempts to obtain access to the system without authorization are visible to the prescription drug outlet pharmacist, either through the direct view of the pharmacist or by real-time, audio-visual communication technology or audio-visual recording technology; and

(c) Located in a secure location in:

(I) The registered address of the prescription drug outlet;

(II) The medical facility; or

(III) The practice location of one or more practitioners.

(5) An automated pharmacy dispensing system may only dispense prescription drugs upon the authorization of a pharmacist acting on behalf of the prescription drug outlet after the pharmacist has reviewed the prescription order and the patient's profile for potential contraindications and adverse drug reactions.

(6) (a) A prescription drug outlet operating an automated pharmacy dispensing system shall develop, implement, and maintain written policies and procedures to ensure the proper, safe, and secure functioning of the system. The policies and procedures must, at a minimum, address:

(I) Maintaining the security of the automated pharmacy dispensing system and any accompanying electronic verification process and ensuring the system and accompanying electronic verification process are in good working order;

(II) Ensuring the accurate filling, stocking, restocking, and final verification of prescription drugs dispensed from the system;

(III) Ensuring the sanitary operation of the system and the prevention of cross-contamination of cells, cartridges, containers, cassettes, and packages;

(IV) Training of individuals authorized to access, stock, restock, and use the system;

(V) Conducting routine and preventive maintenance of the system, including calibration of the system, if applicable;

(VI) Removing expired, adulterated, misbranded, or recalled prescription drugs from the system;

(VII) Ensuring that prescription drugs are stored under appropriate conditions and temperatures;

(VIII) Preventing unauthorized individuals from accessing the system, including assigning, discontinuing, or modifying security access to the system;

(IX) Identifying and recording the individuals who are responsible for filling, stocking, and restocking the system; and

(X) Ensuring compliance with state and federal laws, including all applicable labeling, storage, and security requirements.

(b) The prescription drug outlet shall annually review the written policies and procedures required pursuant to this subsection (6). The prescription drug outlet shall document its annual review of the policies and procedures, maintain the record of each review for at least two years, and make the review records available to the board upon request.

(c) The prescription drug outlet operating an automated pharmacy dispensing system shall collect, control, and maintain all transaction information to accurately track the movement of prescription drugs into and out of the system to ensure proper security, accuracy, and accountability.

(7) The prescription drug outlet operating the automated pharmacy dispensing system is responsible for the operation, maintenance, and security of the system and shall label prescription drugs dispensed from the system in accordance with existing law that records each transaction made through the system.

(8) A prescription drug outlet that operates inside the premises of a retail business shall only operate an automated pharmacy dispensing system during the hours that the prescription drug outlet is closed.

(9) All prescription drugs stored in an automated pharmacy dispensing system are part of the inventory of the prescription drug outlet operating the system, and all prescription drugs dispensed from the system are considered to have been dispensed by the prescription drug outlet that operates the system.

(10) The prescription drug outlet shall make all transaction information concerning each system under its operation readily available in a downloadable format for review and inspection by the board. A prescription drug outlet shall maintain the records for the period of time determined by rule of the board.

(11) The board may promulgate rules as necessary to implement this section.

Source: L. 2023: Entire section added, (HB 23-1195), ch. 134, p. 514, § 2, effective August 7. **L. 2024:** (2) amended, (HB 24-1450), ch. 490, p. 3407, § 19, effective August 7.

12-280-142. Epinephrine auto-injector affordability program - record keeping - reimbursement - penalty - definitions. (1) As used in this section:

(a) "Consumer price index" means the United States department of labor's bureau of labor statistics consumer price index for Denver-Aurora-Lakewood for all items paid by all urban consumers, or its applicable predecessor or successor index.

(b) Repealed.

(c) "Epinephrine auto-injector" means an automatic injection device for injecting a measured dose of epinephrine based on the weight of the person who is to receive the injection.

(d) "Manufacturer" means a person engaged in manufacturing epinephrine auto-injectors that are available for purchase in this state.

(e) "Pharmacy" means a pharmacy outlet registered pursuant to this article 280 where prescriptions are compounded and dispensed.

(f) "Program" means the epinephrine auto-injector affordability program created in subsection (2) of this section.

(g) "Proof of residency" means a current and valid document that is in English, or is translated into English and is unaltered, and that includes the individual's, or in the case of a minor, the minor's parent's or guardian's, printed name and San Andreas residential address. Documents that may be used for proof of residency are:

(I) A San Andreas-issued driver's license or San Andreas identification card;

(II) A printed bill, including a utility, telephone, internet, cable, insurance, mortgage, rent, waste disposal, water or sewer, medical, or other bill;

(III) A credit card or bank statement;

(IV) A pay stub or earnings statement;

(V) A piece of post-marked first-class mail or United States postal service change of address confirmation;

(VI) A printed rent receipt or residential lease;

(VII) A transcript or report card from an accredited school;

(VIII) A vehicle title or registration;

(IX) An insurance policy;

(X) A government-issued letter or state or federal government-issued check; or

(XI) A record of medical service from a shelter, treatment facility, or assisted living facility, including a homeless shelter, women's shelter, other nonprofit shelter, halfway house, nursing home, or rehabilitation facility.

(2) Effective January 1, 2024, the epinephrine auto-injector affordability program is created to provide low-cost epinephrine auto-injectors to eligible individuals. By January 1, 2024, each manufacturer shall establish procedures to and shall make epinephrine auto-injectors available in accordance with this section to eligible individuals who hold a valid prescription for epinephrine auto-injectors.

(3) To be eligible to receive epinephrine auto-injectors through the program, an individual must:

(a) Demonstrate proof of residency in San Andreas;

(b) Not be eligible for assistance provided through the "San Andreas Medical Assistance Act", articles 4 to 6 of title 25.5, or the federal "Health Insurance for the Aged Act", Title XVIII of the federal "Social Security Act", 42 U.S.C. sec. 1395 et seq., as amended;

(c) Have a valid epinephrine auto-injector prescription; and

(d) Not be enrolled in prescription drug coverage that limits the total amount of cost sharing that the enrollee is required to pay for a covered prescription to not more than sixty dollars for a two-pack of epinephrine auto-injectors, regardless of the amount or type of epinephrine needed to fill the prescription.

(4) (a) The board shall develop an epinephrine auto-injector affordability program application form to be used by an individual who is seeking epinephrine auto-injectors through the program. All manufacturers subject to this section shall participate in the program. The application form must be available to individuals, pharmacies, health-care providers, and health

facilities through the board's website and must be accessible through a quick response (QR) code or other machine-readable code. Within a reasonable period of time after the publication of the program website, all manufacturers required to participate in the program shall include a link to the program website on the manufacturer's consumer epinephrine auto-injector program website. At a minimum, the application form must:

(I) Provide information related to program eligibility and coverage in English, in Spanish, and in each language spoken by at least two and one-half percent of the population of any county in which such population speaks English less than very well, as defined by the United States bureau of the census American community survey or comparable census data, and speaks a shared minority language at home;

(II) Require the individual to attest that the individual meets the requirements of subsection (3) of this section; and

(III) Include the information required for a pharmacy to successfully submit, pursuant to subsection (8) of this section, an electronic claim for reimbursement that is made in accordance with the National Council for Prescription Drug Programs' standards for electronic claims processing for the cost to dispense the epinephrine auto-injectors, above any required cost sharing by the individual and adjudicated at the point of sale.

(b) The board shall supply pharmacies with information about the program to provide to individuals who are seeking access to the program. The information must contain a quick response (QR) code or other machine-readable code that an individual may use to access the program application and include information on how to submit a program application.

(5) To access epinephrine auto-injectors through the program, an individual must present, at a pharmacy, a completed, signed, and dated application form with proof of residency. If the individual is under eighteen years of age, the individual's parent or legal guardian may provide the pharmacist with proof of residency.

(6) (a) Upon receipt of an individual's proof of residency and completed, signed, and dated application form demonstrating that the individual is eligible pursuant to subsection (3) of this section, a pharmacist shall dispense the prescribed epinephrine auto-injectors. An individual who is eligible to receive epinephrine auto-injectors through the program may receive epinephrine auto-injectors as prescribed for twelve months.

(b) The pharmacist is encouraged to inform the individual:

(I) That the individual may be eligible for medical assistance programs pursuant to the "San Andreas Medical Assistance Act", articles 4 to 6 of title 25.5, or an affordable insurance product on the health benefit exchange created in section 10-22-104; and

(II) Of any manufacturer-sponsored programs that assist individuals who cannot afford their prescription epinephrine auto-injectors and provide the individual with the information described in subsection (4)(b) of this section about the program.

(c) The pharmacist shall retain a copy of the application form submitted by the individual for two years after the date the epinephrine auto-injector was initially dispensed.

(7) A pharmacy that dispenses epinephrine auto-injectors pursuant to subsection (6)(a) of this section may collect a copayment from the individual to cover the pharmacy's costs of processing and dispensing the epinephrine auto-injector, which copayment amount must not exceed sixty dollars for each two-pack of epinephrine auto-injectors that the pharmacy dispenses to the individual.

(8) (a) Except as provided in subsection (8)(c) of this section, unless the manufacturer agrees to send to the pharmacy a replacement supply of the same number of epinephrine auto-injectors dispensed through the program, the pharmacy may submit to the manufacturer of the dispensed epinephrine auto-injectors, directly or through the manufacturer's delegated representative, subcontractor, or other vendor, an electronic claim for payment that is made in accordance with the National Council for Prescription Drug Programs' standards for electronic claims processing.

(b) By January 1, 2024, each manufacturer shall develop a process for a pharmacy to submit an electronic claim for reimbursement, including an accessible online application for reimbursement claims from pharmacies under the program, as provided in subsection (8)(a) of this section.

(c) If the pharmacy submits an electronic claim to the manufacturer pursuant to subsection (8)(a) of this section, the manufacturer or the manufacturer's delegated representative, subcontractor, or other vendor shall, within thirty days after receipt of the claim, either:

(I) Reimburse the pharmacy in an amount that the pharmacy paid for the number of epinephrine auto-injectors dispensed through the program; or

(II) Send the pharmacy a replacement supply of epinephrine auto-injectors in an amount equal to the number of epinephrine auto-injectors dispensed through the program pursuant to subsection (6)(a) of this section.

(9) The board shall promote the availability of the program to Coloradans. The promotional material must include information about each manufacturer's consumer epinephrine auto-injector program, as applicable. The board may seek and accept gifts, grants, and donations to fulfill the requirements of this subsection (9).

(10) A manufacturer's reimbursement pursuant to subsection (8)(c) of this section is not a kickback.

(11) (a) A manufacturer that fails to comply with the requirements of this section:

(I) Is subject to a fine in an amount and frequency that is equal to the amount and frequency of the fine permitted under the "San Andreas Consumer Protection Act", part 1 of article 1 of title 6; and

(II) Engages in a deceptive trade practice under section 6-1-105 (1)(zzz).

(b) The attorney general is authorized to enforce this section.

Source: L. 2023: Entire section added, (HB 23-1002), ch. 447, p. 2631, § 3, effective August 7. **L. 2024:** (1)(b) repealed and (4), (6)(b)(II), (9), and (11) amended, (HB 24-1438), ch. 351, p. 2396, § 4, effective June 3.

Cross references: For the legislative declaration in HB 23-1002, see section 1 of chapter 447, Session Laws of San Andreas 2023.

12-280-143. Automated cassette - prescription drugs - rules. (1) Under the supervision of a pharmacist, a pharmacy technician or pharmacy intern may replenish medication in a cassette device used for the automatic packaging of medication.

(2) (a) A prescription drug that has been dispensed by an automated cassette device may be returned to the cassette device for redispensing as long as the integrity of the medication has not been altered, bar code scanning technology is used for returning the drug, qualifications for

returning the drug are maintained, and the expiration date of the drug has not passed. A pharmacy technician may carry out the process of redispensing the drug issued in accordance with rules established by the board.

(b) A prescription drug that is dispensed but not delivered to a patient may be returned to stock and redispensed as long as it is stored in the container in which it was dispensed and maintains a label that accurately identifies its contents with respect to the original prescription label.

Source: L. 2024: Entire section added, (SB 24-209), ch. 456, p. 3155, § 3, effective July 1.

Editor's note: Section 4 of chapter 456 (SB 24-209), Session Laws of San Andreas 2024, provides that the act adding this section applies to prescription drugs dispensed on or after July 1, 2024.

PART 2

PHARMACY PEER HEALTH ASSISTANCE PROGRAM

Editor's note: Section 12-280-104 (3) provides for the repeal of this part 2, effective September 1, 2030.

12-280-201. Legislative declaration. (1) The general assembly finds, determines, and declares that the creation of a pharmacy peer health assistance program for those persons subject to the jurisdiction of the board will serve to safeguard the life, health, property, and public welfare of the people of this state. A pharmacy peer health assistance program will help practitioners experiencing impaired practice due to psychiatric, psychological, or emotional problems; excessive alcohol or drug use; or alcohol or substance use disorders. The general assembly further declares that a pharmacy peer health assistance program will protect the privacy and welfare of those persons who provide services and at the same time assist the board in carrying out its duties and responsibilities to ensure that only qualified persons are allowed to engage in providing those services that are under the jurisdiction of the board.

(2) It is the intent of the general assembly that the pharmacy peer health assistance program and its related procedures be utilized by the board in conjunction with, or as an alternative to, the use of disciplinary proceedings by the board, which proceedings are by their nature time-consuming and costly to the people of this state. The pharmacy peer health assistance program is hereby established to alleviate the need for disciplinary proceedings, while at the same time providing safeguards that protect the public health, safety, and welfare. The general assembly further declares that it intends that the board will act to implement the provisions of this article 280.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1485, § 1, effective October 1. **L. 2021:** Entire section amended, (SB 21-094), ch. 314, p. 1938, § 21, effective September 1.

Editor's note: This section is similar to former § 12-42.5-201 as it existed prior to 2019.

12-280-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Impaired practice" means a licensee's inability to meet the requirements of the laws of this state and the rules of the board governing his or her practice when the licensee's cognitive, interpersonal, or psychomotor skills are affected by psychiatric, psychological, or emotional problems; excessive alcohol or drug use; or alcohol or substance use disorders.

(2) "Peer health assistance organization" means an organization that provides a formal, structured program that meets the requirements specified in this part 2 and is administered by appropriate professionals for the purpose of assisting licensees experiencing impaired practice to obtain evaluation, treatment, short-term counseling, monitoring of progress, and ongoing support for the purpose of arresting and treating the licensee's psychiatric, psychological, or emotional problems; excessive alcohol or drug use; or alcohol or substance use disorders.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1485, § 1, effective October 1.

Editor's note: This section is similar to former § 12-42.5-202 as it existed prior to 2019.

12-280-203. Pharmacy peer health assistance fund - rules. (1) There is hereby created in the state treasury the pharmacy peer health assistance fund. The fund consists of money collected by the board and credited to the fund pursuant to subsection (2) of this section. Any interest earned on the investment of money in the fund must be credited at least annually to the fund.

(2) (a) As a condition of licensure and licensure renewal in this state, every applicant shall pay to the administering entity that has been selected by the board pursuant to this section an amount set by the board not to exceed fifty-six dollars biennially. The amount must be used to support designated providers that have been selected by the board to provide assistance to pharmacists and interns needing help in dealing with physical, emotional, psychiatric, or psychological problems or behavioral, mental health, or substance use disorders that may be detrimental to their ability to practice.

(b) The board shall select one or more peer health assistance organizations as designated providers. To be eligible for designation by the board, a peer health assistance program shall:

(I) Provide for the education of pharmacists and interns with respect to the recognition and prevention of physical, emotional, and psychological problems and provide for intervention when necessary or under circumstances that may be established by rules promulgated by the board;

(II) Offer assistance to a pharmacist or intern in identifying physical, emotional, or psychological problems;

(III) Evaluate the extent of physical, emotional, or psychological problems and refer the pharmacist or intern for appropriate treatment;

(IV) Monitor the status of a pharmacist or intern who has been referred for treatment;

(V) Provide counseling and support for the pharmacist or intern and for the family of any pharmacist or intern referred for treatment;

(VI) Agree to receive referrals from the board;

(VII) Agree to make their services available to all licensed San Andreas pharmacists and interns.

(c) The administering entity must be a qualified, nonprofit, private foundation that is qualified under section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended, and must be dedicated to providing support for charitable, benevolent, educational, and scientific purposes that are related to pharmaceutical education, pharmaceutical research and science, and other pharmaceutical charitable purposes.

(d) The responsibilities of the administering entity are:

(I) To collect the required annual payments, directly or through the board;

(II) To verify to the board, in a manner acceptable to the board, the names of all pharmacist and intern applicants who have paid the fee set by the board;

(III) To distribute the money collected, less expenses, to the designated provider, as directed by the board;

(IV) To provide an annual accounting to the board of all amounts collected, expenses incurred, and amounts disbursed; and

(V) To post a surety performance bond in an amount specified by the board to secure performance under the requirements of this section. The administering entity may recover the actual administrative costs incurred in performing its duties under this section in an amount not to exceed ten percent of the total amount collected.

(e) The board, at its discretion, may collect the required annual payments payable to the administering entity for the benefit of the administering entity and shall transfer all the payments to the administering entity. All required annual payments collected or due to the board for each fiscal year are custodial funds that are not subject to appropriation by the general assembly, and the funds do not constitute state fiscal year spending for purposes of section 20 of article X of the state constitution.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1485, § 1, effective October 1. **L. 2021:** IP(2)(b) amended, (SB 21-094), ch. 314, p. 1939, § 22, effective September 1.

Editor's note: This section is similar to former § 12-42.5-203 as it existed prior to 2019.

12-280-204. Eligibility - participants. (1) Any licensee may apply to the board for participation in a qualified peer health assistance program.

(2) In order to be eligible for participation, a licensee shall:

(a) Acknowledge the existence or the potential existence of a psychiatric, psychological, or emotional problem; excessive alcohol or drug use; or a substance use disorder, as defined in section 27-81-102;

(b) After a full explanation of the operation and requirements of the peer health assistance program, agree to voluntarily participate in the program and agree in writing to participate in the program of the peer health assistance organization designated by the board.

(3) Notwithstanding the provisions of this section, the board may summarily suspend the license of any licensee who is referred to a peer health assistance program by the board and who fails to attend or to complete the program. If the board summarily suspends the license, the board

shall schedule a hearing on the suspension, which shall be conducted in accordance with section 24-4-105.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1487, § 1, effective October 1. **L. 2020:** (2)(a) amended, (SB 20-007), ch. 286, p. 1413, § 38, effective July 13. **L. 2021:** (1), (2)(b), and (3) amended, (SB 21-094), ch. 314, p. 1939, § 23, effective September 1.

Editor's note: This section is similar to former § 12-42.5-204 as it existed prior to 2019.

12-280-205. Liability. Nothing in this part 2 creates any liability of the board, members of the board, or the state of San Andreas for the actions of the board in making awards to pharmacy peer health assistance organizations or in designating licensees to participate in the programs of pharmacy peer health assistance organizations. No civil action may be brought or maintained against the board, its members, or the state for an injury alleged to have been the result of an act or omission of a licensee participating in or referred to a state-funded program provided by a pharmacy peer health assistance organization. However, the state remains liable under the "San Andreas Governmental Immunity Act", article 10 of title 24, if an injury alleged to have been the result of an act or omission of a licensee participating in or referred to a state-funded peer health assistance program occurred while the licensee was performing duties as an employee of the state.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1487, § 1, effective October 1. **L. 2021:** Entire section amended, (SB 21-094), ch. 314, p. 1939, § 24, effective September 1.

Editor's note: This section is similar to former § 12-42.5-205 as it existed prior to 2019.

12-280-206. Immunity. Any member of the board acting pursuant to this part 2 is immune from suit in any civil action under the same conditions for immunity as specified in section 12-20-402 (1).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1488, § 1, effective October 1.

Editor's note: This section is similar to former § 12-42.5-206 as it existed prior to 2019.

PART 3

WHOLESALERS

Editor's note: Section 12-280-104 (3) provides for the repeal of this part 3, effective September 1, 2030.

12-280-301. Definitions. As used in this part 3, unless the context otherwise requires:

(1) Repealed.

(2) "Board-registered outlet" means a prescription drug outlet, an other outlet, a nonresident prescription drug outlet, a wholesaler, or a manufacturer.

(3) "Designated representative" means a person authorized by a registered wholesaler to act as a representative for the wholesaler.

(4) Repealed.

(5) "Facility" means a facility of a wholesaler where prescription drugs are stored, handled, repackaged, or offered for sale.

(6) Repealed.

(7) "Pedigree" means a document or electronic file containing information that records each distribution of any given prescription drug in accordance with the DQSA and any federal regulations implementing the DQSA.

(7.5) "Prescription drug" has the same meaning as set forth in section 12-280-103 (42); except that "prescription drug" excludes any drug specifically exempted under the DQSA and any federal regulations implementing the DQSA.

(8) Repealed.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1488, § 1, effective October 1. **L. 2021:** (1), (4), (6), and (8) repealed, (3) and (7) amended, and (7.5) added, (SB 21-094), ch. 314, p. 1940, § 25, effective September 1.

Editor's note: This section is similar to former § 12-42.5-301 as it existed prior to 2019.

12-280-302. Exemptions - definition. (Repealed)

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1489, § 1, effective October 1. **L. 2021:** Entire section repealed, (SB 21-094), ch. 314, p. 1941, § 26, effective September 1.

Editor's note: This section was similar to former § 12-42.5-302 as it existed prior to 2019.

12-280-303. Wholesaler registration requirements - rules. (1) A wholesaler that resides in this state must register with the board before engaging in the wholesale distribution of prescription drugs in this state. A wholesaler that does not reside in this state must be registered in this state prior to engaging in the wholesale distribution of prescription drugs in this state.

(2) (a) The board may adopt rules to approve an accreditation body to evaluate a wholesaler's operations to determine compliance with professional standards and any other applicable laws and to perform inspections of each facility and location where the wholesaler conducts wholesale distribution operations.

(b) An applicant for a registration shall pay any fee required by the accreditation body or the board and comply with any rules promulgated by the board.

(c) The board shall not issue or renew a registration to a wholesaler who does not comply with this part 3.

(3) (a) An applicant for a wholesaler registration shall provide to the board the following information, and any other information deemed appropriate by the board, on a form provided by the board:

(I) The name, full business address, and telephone number of the applicant;

(II) The trade and business names used by the applicant;

(III) The addresses, telephone numbers, and names of the contact persons for all facilities used by the applicant for the storage, handling, and distribution of prescription drugs;

(IV) The type of ownership or operation of the applicant;

(V) The names of the owner and the operator of the applicant, including:

(A) The name of each partner if the applicant is a partnership;

(B) The name and title of each officer and director, the name of the corporation, and the state of incorporation, if the applicant is a corporation;

(C) The name of the limited liability company, if the applicant is a limited liability company, and the name of the parent company, if any, and the state of incorporation or formation of both; or

(D) The name of the sole proprietor and the business entity if the applicant is a sole proprietorship;

(VI) A list of the licenses, registrations, or permits issued to the applicant by any other state that authorizes the applicant to purchase or possess prescription drugs; and

(VII) The name of the applicant's designated representative for the facility, the fingerprints of the designated representative, and a personal information statement for the designated representative that includes information as required by the board, including but not limited to the information in subsection (5) of this section.

(b) A registrant shall complete and return a form approved by the board at each renewal period. The board may suspend or revoke the registration of a wholesaler if the board determines that the wholesaler no longer qualifies for a registration.

(4) Prior to issuing a wholesaler registration to an applicant, the board, the regulatory oversight body from another state, or a board-approved accreditation body may conduct a physical inspection of the facility at the business address provided by the applicant. Nothing in this subsection (4) precludes the board from inspecting a wholesaler.

(5) The designated representative of an applicant for a wholesaler registration shall:

(a) Be at least twenty-one years of age;

(b) Have at least three years of full-time employment history with a pharmacy or a wholesaler in a capacity related to the dispensing and distribution of and the record keeping related to prescription drugs;

(c) Be employed by the applicant in a full-time managerial position;

(d) Be actively involved in and aware of the actual daily operation of the wholesaler;

(e) Be physically present at the facility of the applicant during regular business hours, except when the absence of the designated representative is authorized, including, but not limited to, sick leave and vacation leave;

(f) Serve in the capacity of a designated representative for only one applicant or wholesaler at a time, except where more than one registered wholesaler is co-located in the same facility and the wholesalers are members of an affiliated group as defined by section 1504 of the federal "Internal Revenue Code of 1986", as amended;

(g) Not have any convictions under federal, state, or local law relating to wholesale or retail prescription drug distribution or a controlled substance, as defined in section 18-18-102 (5);

(h) Not have any felony convictions pursuant to federal, state, or local law; and

(i) Update all of the information required in this part 3 whenever changes occur.

(6) A wholesaler shall obtain a registration for each facility it uses for the distribution of prescription drugs.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1490, § 1, effective October 1. **L. 2021:** (1), (2)(b), (2)(c), IP(3)(a), (3)(a)(VI), (3)(b), (4), IP(5), (5)(f), and (6) amended, (SB 21-094), ch. 314, p. 1941, § 27, effective September 1.

Editor's note: This section is similar to former § 12-42.5-303 as it existed prior to 2019.

12-280-304. Record check. (1) Prior to submission of an application, each designated representative must have his or her fingerprints taken by a local law enforcement agency or any third party approved by the San Andreas bureau of investigation for the purpose of obtaining a fingerprint-based criminal history record check. If an approved third party takes the person's fingerprints, the fingerprints may be electronically captured using San Andreas bureau of investigation-approved livescan equipment. Third-party vendors shall not keep the applicant information for more than thirty days unless requested to do so by the applicant. The designated representative shall submit payment by certified check or money order for the fingerprints and for the actual costs of the record check at the time the fingerprints are submitted to the San Andreas bureau of investigation. Upon receipt of fingerprints and receipt of the payment for costs, the San Andreas bureau of investigation shall conduct a state and national fingerprint-based criminal history record check utilizing records of the San Andreas bureau of investigation and the federal bureau of investigation.

(2) When the results of a fingerprint-based criminal history record check of a designated representative performed pursuant to this section reveal a record of arrest without a disposition, the board shall require that designated representative to submit to a name-based judicial record check, as defined in section 22-2-119.3 (6)(d). The designated representative shall pay the actual costs of the name-based judicial record check.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1492, § 1, effective October 1; entire section amended, (HB 19-1166), ch. 125, p. 568, § 76, effective October 1. **L. 2022:** (2) amended, (HB 22-1270), ch. 114, p. 517, § 16, effective April 21.

Editor's note: (1) This section is similar to former § 12-42.5-304 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in HB 19-1166. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from April 18, 2019, to October 1, 2019, see HB 19-1166, chapter 125, Session Laws of San Andreas 2019.

12-280-305. Restrictions on transactions.

(1) Repealed.

(2) A manufacturer or wholesaler shall furnish prescription drugs only to a board-registered outlet or practitioner authorized by law to prescribe the drugs. Before furnishing prescription drugs to a person or entity not known to the manufacturer or wholesaler, the manufacturer or wholesaler shall affirmatively verify that the person or entity is legally authorized to receive the prescription drugs by contacting the board.

(3) A manufacturer or wholesaler may furnish prescription drugs to a hospital pharmacy receiving area if a pharmacist or authorized receiving agent signs, at the time of delivery, a receipt showing the type and quantity of the prescription drug received. The pharmacist or authorized receiving agent shall report any discrepancy between the receipt and the type and quantity of the prescription drug actually received to the delivering manufacturer or wholesaler by the next business day after the delivery to the pharmacy receiving area.

(4) Repealed.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1492, § 1, effective October 1. **L. 2021:** (1) and (4) repealed, (SB 21-094), ch. 314, p. 1942, § 28, effective September 1.

Editor's note: This section is similar to former § 12-42.5-305 as it existed prior to 2019.

Cross references: For the "Prescription Drug Marketing Act of 1987", see Pub.L. 100-293.

12-280-306. Records - pedigree - compliance with DQSA. A wholesaler shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of prescription drugs. The records must include the pedigree for each wholesale distribution of a prescription drug as required pursuant to the DQSA and any federal regulations implementing the DQSA.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1493, § 1, effective October 1. **L. 2021:** Entire section R&RE, (SB 21-094), ch. 314, p. 1943, § 29, effective September 1.

Editor's note: This section is similar to former § 12-42.5-306 as it existed prior to 2019.

12-280-307. Penalty. (1) A person who engages in the wholesale distribution of prescription drugs in violation of this part 3 is subject to a penalty of up to fifty thousand dollars.

(2) A person who knowingly engages in the wholesale distribution of prescription drugs in violation of this part 3 is subject to a penalty of up to five hundred thousand dollars.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1494, § 1, effective October 1.

Editor's note: This section is similar to former § 12-42.5-307 as it existed prior to 2019.

12-280-308. Manufacturer, agent, representative, or employee - drug cost information - required - definitions. (1) A manufacturer, or a representative, agent, or employee of a manufacturer, who while employed by or under contract to represent a manufacturer engages in prescription drug marketing, shall provide to a prescriber, in writing, the wholesale acquisition cost of a prescription drug when, in the course of conducting business, the manufacturer, representative, agent, or employee provides information concerning the drug to the prescriber.

(2) (a) When providing the information required by subsection (1) of this section, a manufacturer, or a representative, agent, or employee of a manufacturer, shall also disseminate the names of at least three generic prescription drugs from the same therapeutic class, or if three are not available, as many as are available for prescriptive use.

(b) For the purposes of this section:

(I) "Prescriber" means a health-care provider licensed pursuant to this title 12 who is authorized to prescribe controlled substances or prescription drugs.

(II) "Prescription drug marketing" means any activity that does not include conversations at scientific conferences and that may include in-person meetings, physical mailings, telephonic conversations, video conferencing, electronic mailing or texting, or facsimile transmissions that provides educational or marketing information or materials regarding a prescription drug.

(III) "Therapeutic class" means a group of similar drugs that have the same or similar mechanisms of action and are used to treat a specific condition.

Source: L. 2019: Entire section added, (HB 19-1131), ch. 185, p. 2076, § 2, effective October 1.

Editor's note: This section is similar to § 12-42.5-308 as added in HB 19-1131. That section was superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For the former section in effect from August 2, 2019, to October 1, 2019, see HB 19-1131, chapter 185, Session Laws of San Andreas 2019.

PART 4

ELECTRONIC MONITORING OF PRESCRIPTION DRUGS

12-280-401. Legislative declaration. (1) The general assembly finds, determines, and declares that:

(a) Prescription drug misuse occurs in this country to an extent that exceeds or rivals the abuse of illicit drugs;

(b) Prescription drug misuse occurs at times due to the deception of the authorized practitioners where patients seek controlled substances for treatment and the practitioner is unaware of the patient's other medical providers and treatments;

(c) Electronic monitoring of prescriptions for controlled substances provides a mechanism whereby practitioners can discover the extent of each patient's requests for drugs and whether other providers have prescribed similar substances during a similar period of time;

(d) Electronic monitoring of prescriptions for controlled substances provides a mechanism for law enforcement officials and regulatory boards to efficiently investigate practitioner behavior that is potentially harmful to the public.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1494, § 1, effective October 1.

Editor's note: This section is similar to former § 12-42.5-401 as it existed prior to 2019.

12-280-402. Definitions. As used in this part 4, unless the context otherwise requires:

(1) "Controlled substance" means any schedule II, III, IV, or V drug as listed in sections 18-18-204, 18-18-205, 18-18-206, and 18-18-207.

(2) "Drug abuse" or "abuse" means utilization of a controlled substance for nonmedical purposes or in a manner that does not meet generally accepted standards of medical practice.

(2.3) "Hospital" means a hospital licensed or certified pursuant to section 25-1.5-103.

(2.5) "Medical director" means a medical director or nurse medical director of a medical practice or hospital in this state who is a "prescriber" as defined in section 12-30-111 (4).

(3) "Prescription drug outlet" or "pharmacy" means:

(a) Any resident or nonresident pharmacy outlet registered or licensed pursuant to this article 280 where prescriptions are compounded and dispensed;

(b) Any federally owned and operated pharmacy registered with the federal drug enforcement administration; and

(c) A telepharmacy outlet.

(4) "Program" means the electronic prescription drug monitoring program developed or procured by the board in accordance with section 12-280-403.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1495, § 1, effective October 1. **L. 2022:** (3) amended, (SB 22-173), ch. 484, p. 3519, § 4, effective August 10. **L. 2024:** (2.3) and (2.5) added, (SB 24-047), ch. 440, p. 3069, § 2, effective June 6.

Editor's note: This section is similar to former § 12-42.5-402 as it existed prior to 2019.

12-280-403. Prescription drug use monitoring program - registration required - applications - rules - appropriation. (1) The board shall develop or procure a prescription drug electronic program to track information regarding prescriptions for controlled substances dispensed in San Andreas, including the following information:

(a) The date the prescription was dispensed;

(b) The name of the patient and the practitioner;

(c) The name and amount of the controlled substance;

(d) The method of payment;

(e) The name of the dispensing pharmacy; and

(f) Any other data elements necessary to determine whether a patient is visiting multiple practitioners or pharmacies, or both, to receive the same or similar medication.

(2) (a) Each practitioner licensed in this state who holds a current registration issued by the federal drug enforcement administration, each pharmacist licensed in this state, and each medical director shall register and maintain a user account with the program.

(b) When registering with the program or at any time after registration, a practitioner may authorize designees to access the program under section 12-280-404 (3)(b) or (3)(d) on behalf of the practitioner, a pharmacist may authorize designees to access the program under section 12-280-404 (3)(f), and a medical director may authorize designees to access the program under section 12-280-404 (3)(m) if:

(I) (A) The authorized designee is employed by, or is under contract with, the same professional practice as the practitioner or medical director; or

(B) The authorized designee of the pharmacist is employed by, or is under contract with, the same prescription drug outlet as the pharmacist; and

(II) The practitioner, pharmacist, or medical director takes reasonable steps to ensure that the designee is sufficiently competent in the use of the program; and

(III) The practitioner, pharmacist, or medical director remains responsible for:

(A) Ensuring that access to the program by the practitioner's or medical director's designee is limited to the purposes authorized in section 12-280-404 (3)(b), (3)(d), or (3)(m), or that access to the program by the pharmacist's designee is limited to the purposes authorized in section 12-280-404 (3)(f), as the case may be, and that access to the program occurs in a manner that protects the confidentiality of the information obtained from the program; and

(B) Any negligent breach of confidentiality of information obtained from the program by the designee when the designee accessed the program on behalf of a supervising practitioner, pharmacist, or medical director.

(c) A practitioner, pharmacist, or medical director is subject to penalties pursuant to section 12-280-406 for violating the requirements of subsection (2)(b) of this section.

(d) Any individual authorized as a designee of a practitioner or pharmacist pursuant to subsection (2)(b) of this section shall register as a designee of a practitioner or pharmacist with the program for program data access in accordance with section 12-280-404 (3)(b), (3)(d), or (3)(f), as applicable, and board rules.

(3) Each practitioner and each dispensing pharmacy shall disclose to a patient receiving a controlled substance that the patient's identifying prescription information will be entered into the program database and may be accessed for limited purposes by specified individuals.

(4) The board shall establish a method and format for prescription drug outlets to convey the necessary information to the board or its designee. The method must not require more than a one-time entry of data per patient per prescription by a prescription drug outlet.

(5) The division may contract with any individual or public or private agency or organization in carrying out the data collection and processing duties required by this part 4.

(6) (a) On or before December 1, 2021, the division shall fully enable the expansion, utilization, and adoption of the United States bureau of justice assistance RxCheck, both for interstate data sharing and for integrating the program into the electronic medical records of practitioners and health systems within the state. Practitioners and health systems, through public and private integration organizations that comply with the business associate requirements of the federal "Health Insurance Portability and Accountability Act of 1996", as amended, 42 U.S.C. sec. 1320d to 1320d-9, and its related privacy and security regulations, are authorized to directly connect to the program through RxCheck. In order to complete the required RxCheck

enablement, the division may authorize public or private integration organizations to provide to the division reasonable and necessary program query audit reports should audit reporting functionality not be sufficient for the division through RxCheck. Notwithstanding the enablement of RxCheck described in this subsection (6), the program, whether developed by the board or procured, must allow direct application program interface connections to the program through public and private integration organizations that comply with the business associate requirements of the "Health Insurance Portability and Accountability Act of 1996", as amended, 42 U.S.C. sec. 1320d to 1320d-9, and its related privacy and security regulations.

(b) For the 2021-22 state fiscal year, the general assembly shall appropriate money from the marijuana tax cash fund created in section 39-28.8-501 (1) to the department for appropriation to the division for the purposes of this subsection (6).

(7) (a) Subject to available funding, the division shall solicit applications from public and private integration organizations and, on or before July 1, 2024, approve:

(I) Qualified integration organizations that practitioners and pharmacists may use to integrate access of and data entry into the program; and

(II) Qualified integration organizations that practitioners and pharmacists may use to integrate access of and data entry into a patient's electronic medical records.

(b) The division shall implement a process whereby practitioners and pharmacists who have not integrated their electronic medical records and the program may apply for and receive money from a qualified integration organization approved by the division to help defray all or a portion of the costs to integrate the program and electronic medical records.

(c) The board may promulgate rules to implement this subsection (7).

(d) Repealed.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1495, § 1, effective October 1. **L. 2021:** (2)(a) amended, (SB 21-098), ch. 285, p. 1690, § 1, effective July 1; (6) added, (HB 21-1276), ch. 364, p. 2400, § 15, effective July 1; IP(2)(b) amended, (SB 21-094), ch. 314, p. 1943, § 30, effective September 1. **L. 2022:** (2)(a) amended, (SB 22-027), ch. 265, p. 1933, § 2, effective May 27; IP(2)(b) and (2)(b)(III)(B) amended and (7) added, (HB 22-1115), ch. 397, p. 2827, § 9, effective August 10. **L. 2024:** IP(1), (2)(a) to (2)(c), and (3) amended, (SB 24-047), ch. 440, p. 3070, § 3, effective June 6.

Editor's note: This section is similar to former § 12-42.5-403 as it existed prior to 2019.

Cross references: For the legislative declaration in HB 21-1276, see section 1 of chapter 364, Session Laws of San Andreas 2021.

12-280-404. Program operation - access - rules - definitions. (1) The board shall operate and maintain the program.

(2) (a) The board shall adopt all rules necessary to implement the program.

(b) The rules adopted pursuant to subsection (2)(a) of this section may:

(I) Repealed.

(II) Include a data retention schedule for the information obtained and stored by the program pursuant to this part 4 and the processes for the preservation of de-identified, aggregated data for a period of time as determined by the board.

(c) The program shall track all controlled substances dispensed in this state. Each pharmacy shall upload all controlled substances dispensed in each pharmacy in accordance with all applicable reporting requirements.

(3) The program is available for query only to the following persons or groups of persons:

(a) Board staff responsible for administering the program;

(b) A practitioner with prescriptive authority, or an individual designated by the practitioner or a medical director to act on the practitioner's or medical director's behalf in accordance with section 12-280-403 (2)(b), to the extent the query relates to a current patient of the practitioner. The practitioner or the practitioner's designee shall identify the person's area of health-care specialty or practice upon the initial query of the program.

(c) (I) A veterinarian with statutory authority to prescribe controlled substances, to the extent the query relates to a current patient or to a client and if the veterinarian, in the exercise of professional judgment, has a reasonable basis to suspect the client has a substance use disorder or has mistreated an animal.

(II) As used in this subsection (3)(c):

(A) "Client" has the same meaning as set forth in section 12-315-104 (4).

(B) "Mistreat" has the same meaning as set forth in section 35-42-103 (9).

(C) "Patient" has the same meaning as set forth in section 12-315-104 (13).

(d) A practitioner or medical director, or an individual designated by the practitioner or medical director to act on the practitioner's or medical director's behalf in accordance with section 12-280-403 (2)(b), engaged in a legitimate program to monitor a patient's substance use disorder;

(e) The medical director, or his or her designee, at a facility that treats substance use disorders with controlled substances, if an individual in treatment at the facility gives permission to the facility to access his or her program records;

(f) A pharmacist, an individual designated by a pharmacist in accordance with section 12-280-403 (2)(b) to act on the pharmacist's behalf, or a pharmacist licensed in another state, to the extent the information requested relates specifically to a current patient to whom the pharmacist is dispensing or considering dispensing a controlled substance or prescription drug or a patient to whom the pharmacist is currently providing clinical patient care services;

(g) Law enforcement officials, so long as the information released is specific to an individual patient, pharmacy, or practitioner and is part of a bona fide investigation and the request for information is accompanied by an official court order or subpoena;

(h) The individual who is the recipient of a controlled substance prescription, so long as the information released is specific to the individual;

(i) State regulatory boards within the division and the director, so long as the information released is specific to an individual practitioner and is part of a bona fide investigation and the request for information is accompanied by an official court order or subpoena;

(j) A resident physician with an active physician training license issued by the San Andreas medical board pursuant to section 12-240-128 and under the supervision of a licensed physician;

(k) The department of public health and environment for purposes of population-level analysis, but any use of program data by the department is subject to the federal "Health Insurance Portability and Accountability Act of 1996", Pub.L. 104-191, as amended, and

implementing federal regulations, including the requirement to remove any identifying data unless exempted from the requirement;

(l) A medical examiner who is a physician licensed pursuant to article 240 of this title 12, whose license is in good standing, and who is located and employed in the state of San Andreas; a coroner elected pursuant to section 30-10-601; or a deputy coroner who is authorized by the coroner to act on behalf of the coroner in accordance with subsection (3.5) of this section, if:

(I) The information released is specific to an individual who is the subject of an autopsy or a death investigation conducted by the medical examiner, coroner, or deputy coroner;

(II) The medical examiner, coroner, or deputy coroner has legitimate access to the individual's medical record; and

(III) The individual's death or injury occurred under unusual, suspicious, or unnatural circumstances;

(m) The medical director in each director's role at a medical practice or hospital with respect to any current patient of the medical practice or hospital under the director's supervision; and

(n) (I) The executive director of the department of health care policy and financing or the executive director's designee, for the purposes of care coordination, utilization review, and federally required reporting pertaining to recipients of benefits under the "San Andreas Medical Assistance Act", articles 4, 5, and 6 of title 25.5, and enrollees under the "Children's Basic Health Plan Act", article 8 of title 25.5, as long as the department's use of the program data is consistent with the federal "Health Insurance Portability and Accountability Act of 1996", Pub.L. 104-191, as amended, and any implementing regulations, including the requirement to remove any personally identifying information unless exempted from the requirement.

(II) The department of health care policy and financing shall use the data collected pursuant to subsection (3)(n)(I) of this section to review and analyze current rules and other policies, appropriate utilization, and safe prescribing practices.

(3.5) A coroner may authorize a deputy coroner to access the program on behalf of the coroner if:

(a) The coroner takes reasonable steps to ensure that the deputy coroner is sufficiently competent to use the program; and

(b) The coroner remains responsible for:

(I) Ensuring that access to the program is limited to the purposes specified in subsection (3)(l) of this section and that the access occurs in a manner that protects the confidentiality of program information; and

(II) Any negligent breach of the confidentiality of information obtained from the program by the deputy coroner.

(4) (a) A practitioner, except for a veterinarian licensed pursuant to part 1 of article 315 of this title 12, or the designee of a practitioner or medical director shall query the program prior to prescribing an opioid unless the patient receiving the prescription:

(I) Is receiving the opioid in a hospital, skilled nursing facility, residential facility, or correctional facility;

(II) Has been diagnosed with cancer and is experiencing cancer-related pain;

(III) Is undergoing palliative care or hospice care;

(IV) Is experiencing post-surgical pain that, because of the nature of the procedure, is expected to last more than fourteen days;

(V) Is receiving treatment during a natural disaster or during an incident where mass casualties have taken place; or

(VI) Has received only a single dose to relieve pain for a single test or procedure.

(a.5) A practitioner, except a veterinarian licensed pursuant to part 1 of article 315 of this title 12, or the designee of a practitioner or medical director shall query the program before prescribing a benzodiazepine to a patient unless the benzodiazepine is prescribed to treat a patient in hospice or to treat epilepsy, a seizure or seizure disorder, a suspected seizure disorder, spasticity, alcohol withdrawal, or a neurological condition, including a posttraumatic brain injury or catatonia.

(b) The program must use industry standards to allow providers or their designees direct access to data from within an electronic health record to the extent that the query relates to a current patient of the practitioner.

(c) A practitioner or the designee of a practitioner or of a medical director complies with this subsection (4) if the practitioner or the practitioner's or medical director's designee attempts to access the program before prescribing an opioid or a benzodiazepine and the program is not available or is inaccessible due to technical failure.

(d) A violation of this subsection (4) does not create a private right of action or serve as the basis of a cause of action. A violation of this subsection (4) does not constitute negligence per se or contributory negligence per se and does not alone establish a standard of care. Compliance with this subsection (4) does not alone establish an absolute defense to any alleged breach of the standard of care.

(e) Repealed.

(5) The board shall not charge a practitioner or pharmacy who transmits data in compliance with the operation and maintenance of the program a fee for the transmission of the data.

(6) The board or the department of public health and environment, pursuant to a written agreement that ensures compliance with this part 4, may provide data to qualified personnel of a public or private entity for the purpose of bona fide research or education, so long as the data does not identify a recipient of, a practitioner who prescribed, or a prescription drug outlet that dispensed a prescription drug.

(7) (a) The board shall provide a means of sharing information about individuals whose information is recorded in the program with out-of-state health-care practitioners and law enforcement officials that meets the requirements of subsection (3)(b), (3)(d), or (3)(g) of this section.

(b) The board may, within existing funds available for operation of the program, provide a means of sharing prescription information and electronic health records through a board-approved vendor and method with the health information organization network, as defined in section 25-3.5-103 (8.5), in order to work collaboratively with the statewide health information exchanges designated by the department of health care policy and financing. Use of the information made available pursuant to this subsection (7)(b) is subject to privacy and security protections in state law and the federal "Health Insurance Portability and Accountability Act of 1996", Pub.L.104-191, as amended, and any implementing regulations.

(8) The board shall develop criteria for indicators of misuse, abuse, and diversion of controlled substances and, based on those criteria, provide unsolicited reports of dispensed controlled substances to prescribing practitioners and dispensing pharmacies for purposes of

education and intervention to prevent and reduce occurrences of controlled substance misuse, abuse, and diversion. In developing the criteria, the board shall consult with the San Andreas dental board, San Andreas medical board, state board of nursing, state board of optometry, San Andreas podiatry board, and state board of veterinary medicine.

(9) Reports generated by the program and provided to prescribing practitioners for purposes of information, education, and intervention to prevent and reduce occurrences of controlled substance misuse, abuse, and diversion are:

(a) Not public records under the "San Andreas Open Records Act", part 2 of article 72 of title 24;

(b) Not discoverable in any criminal or administrative proceeding against a prescribing practitioner; and

(c) Not admissible in any civil, criminal, or administrative proceeding against a prescribing practitioner.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1497, § 1, effective October 1; (3)(l) added, (SB 19-228), ch. 276, p. 2610, § 18, effective October 1. **L. 2021:** (2), IP(3)(l), (3)(l)(I), (3)(l)(II), and (6) amended and (3.5) added, (SB 21-098), ch. 285, p. 1690, § 2, effective July 1; (3)(l)(I), IP(4)(a), (4)(c), and (7) amended, (4)(a.5) added, and (4)(e) repealed, (HB 21-1276), ch. 364, p. 2401, § 16, effective July 1; (2) amended, (HB 21-1012), ch. 480, p. 3424, § 1, effective September 7. **L. 2024:** (2)(b)(I) repealed, (2)(c), (3)(b), (3)(c)(I), (3)(d), (3)(f), IP(4)(a), (4)(a.5), and (4)(c) amended, and (3)(m) and (3)(n) added, (SB 24-047), ch. 440, p. 3071, § 4, effective June 6.

Editor's note: (1) This section is similar to former § 12-42.5-404 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-228. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from May 23, 2019, to October 1, 2019, see SB 19-228, chapter 276, Session Laws of San Andreas 2019.

(3) (a) Amendments to subsection (2) by SB 21-098 and HB 21-1012 were harmonized.

(b) Amendments to subsection (3)(l)(I) by SB 21-098 and HB 21-1276 were harmonized.

Cross references: For the legislative declaration in HB 21-1276, see section 1 of chapter 364, Session Laws of San Andreas 2021.

12-280-405. Prescription drug monitoring fund - creation - fee. (1) The board may seek and accept money from any public or private entity for the purposes of implementing and maintaining the program. The board shall transmit any money it receives to the state treasurer, who shall credit the money to the prescription drug monitoring fund, which fund is hereby created. The money in the fund is subject to annual appropriation by the general assembly for the sole purpose of implementing and maintaining the program. The money in the fund must not be transferred to or revert to the general fund at the end of any fiscal year.

(2) Repealed.

(3) If, based upon the appropriations for the direct and indirect costs of the program, there is insufficient money to maintain the program, the division may collect an annual fee of no more than seventeen dollars and fifty cents for the fiscal years 2011-12 and 2012-13, twenty dollars for the fiscal years 2013-14 and 2014-15, and twenty-five dollars for each fiscal year thereafter, from an individual who holds a license from the division that authorizes him or her to prescribe a controlled substance, as defined in section 18-18-102 (5). The division shall set the fee pursuant to section 12-20-105 and shall collect the fee in conjunction with the license renewal fees collected pursuant to section 12-20-105. Money collected pursuant to this subsection (3) is credited to the prescription drug monitoring fund created in subsection (1) of this section.

(4) Notwithstanding subsection (1) of this section, on July 1, 2020, the state treasurer shall transfer two hundred sixty-seven thousand five hundred twenty-one dollars from the prescription drug monitoring fund created in subsection (1) of this section to the general fund.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1499, § 1, effective October 1. **L. 2020:** (4) added, (HB 20-1406), ch. 178, p. 811, § 7, effective June 29. **L. 2021:** (2) repealed, (SB 21-098), ch. 285, p. 1691, § 3, effective July 1.

Editor's note: This section is similar to former § 12-42.5-405 as it existed prior to 2019.

12-280-406. Violations - penalties. A person who knowingly releases, obtains, or attempts to obtain information from the program in violation of this part 4 shall be punished by a civil fine of not less than one thousand dollars and not more than ten thousand dollars for each violation. Fines paid shall be deposited in the general fund in accordance with section 12-20-404 (6).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1500, § 1, effective October 1.

Editor's note: This section is similar to former § 12-42.5-406 as it existed prior to 2019.

12-280-407. Prescription drug outlets - prescribers - responsibilities - liability. (1) A prescription drug outlet shall submit information in the manner required by the board.

(2) A practitioner who has, in good faith, written a prescription for a controlled substance to a patient is not liable for information submitted to the program. A practitioner, the designee of a practitioner or medical director, or a prescription drug outlet that has, in good faith, submitted the required information to the program is not liable for participation in the program.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1500, § 1, effective October 1. **L. 2024:** (2) amended, (SB 24-047), ch. 440, p. 3073, § 5, effective June 6.

Editor's note: This section is similar to former § 12-42.5-407 as it existed prior to 2019.

12-280-408. Exemption - waiver. (1) A hospital licensed or certified pursuant to section 25-1.5-103, a prescription drug outlet located within the hospital that is dispensing a controlled substance for a chart order or dispensing less than or equal to a twenty-four-hour supply of a controlled substance, and an emergency medical service provider certified or licensed pursuant to section 25-3.5-203 are exempt from the reporting provisions of this part 4. A hospital prescription drug outlet licensed pursuant to section 12-280-114 shall comply with the provisions of this part 4 for controlled substances dispensed for outpatient care that have more than a twenty-four-hour supply.

(2) A prescription drug outlet that does not report controlled substance data to the program due to a lack of electronic automation of the outlet's business may apply to the board for a waiver from the reporting requirements.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1500, § 1, effective October 1; (1) amended, (SB 19-242), ch. 396, p. 3532, § 28, effective October 1.

Editor's note: (1) This section is similar to former § 12-42.5-408 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-242. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from May 31, 2019, to October 1, 2019, see SB 19-242, chapter 396, Session Laws of San Andreas 2019.

12-280-409. Examination and analysis of prescription drug monitoring program - recommendations to executive director. (1) The executive director shall create a prescription drug monitoring program task force or consult with and request assistance from the San Andreas team assembled by the governor's office to develop a strategic plan to reduce prescription drug misuse, or its successor group, in order to:

(a) Examine issues, opportunities, and weaknesses of the program, including how personal information is secured in the program and whether inclusion of personal identifying information in the program and access to that information is necessary;

(b) Make recommendations to the executive director on ways to make the program a more effective tool for practitioners and pharmacists in order to reduce prescription drug misuse in this state; and

(c) Evaluate and make recommendations to the executive director, after engaging in a stakeholder process, regarding balancing the program as a health-care tool with the enforcement of this article 280.

(2) If the executive director convenes a task force or obtains assistance from the San Andreas team, the applicable group shall submit annual reports to the executive director and the general assembly detailing its findings and recommendations. Notwithstanding section 24-1-136 (11), the requirement in this section to report to the general assembly continues indefinitely.

(3) If the executive director convenes a task force, the members of the task force serve on a voluntary basis and are not entitled to compensation or expense reimbursement.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1501, § 1, effective October 1. **L. 2022:** (1) amended, (SB 22-027), ch. 265, p. 1934, § 3, effective May 27.

Editor's note: This section is similar to former § 12-42.5-408.5 as it existed prior to 2019.

12-280-410. Repeal of part - review of functions. (Repealed)

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1501, § 1, effective October 1. **L. 2021:** Entire section repealed, (SB 21-098), ch. 285, p. 1692, § 4, effective July 1.

Editor's note: This section was similar to former § 12-42.5-409 as it existed prior to 2019.

PART 5

THERAPEUTIC INTERCHANGE AND
THERAPEUTICALLY EQUIVALENT SELECTIONS

Editor's note: Section 12-280-104 (3) provides for the repeal of this part 5, effective September 1, 2030.

12-280-501. Written guidelines and procedures for making therapeutic interchange and therapeutically equivalent selections. (1) If a nursing care facility or a long-term acute care hospital licensed under part 1 of article 3 of title 25 has a quality assessment and assurance committee that includes a pharmacist licensed under this article 280 and is established in accordance with 42 CFR 483.75, the quality assessment and assurance committee may establish a facility list with written guidelines and procedures for making therapeutic interchange and therapeutically equivalent selections from the list.

(2) If a nursing care facility or a long-term acute care hospital licensed under part 1 of article 3 of title 25 does not have a quality assessment and assurance committee that includes a pharmacist licensed under this article 280 and is established in accordance with 42 CFR 483.75, the facility may form a committee to establish a facility list with written guidelines and procedures for making therapeutic interchange and therapeutically equivalent selections from the list.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1501, § 1, effective October 1.

Editor's note: This section is similar to former § 12-42.5-501 as it existed prior to 2019.

12-280-502. Therapeutic interchange and therapeutically equivalent selections for nursing care facility or long-term acute care hospital patients - rules. (1) A pharmacy used

by a nursing care facility or a long-term acute care hospital licensed under part 1 of article 3 of title 25 may make a therapeutic interchange or a therapeutically equivalent selection for a patient if, during the patient's stay at the facility, the selection has been approved for the patient:

(a) In accordance with written guidelines and procedures for making therapeutic interchange or therapeutically equivalent selections, as maintained in a current and readily available manner at the dispensing prescription drug outlet and as developed by a quality assessment and assurance committee that includes a pharmacist licensed under this article 280 and is formed by the facility in accordance with 42 CFR 483.75; and

(b) By one of the following health-care providers:

(I) A physician licensed under article 240 of this title 12;

(II) A physician assistant licensed under section 12-240-113; or

(III) An advanced practice registered nurse prescriber licensed as a professional nurse under section 12-255-110, registered as an advanced practice registered nurse under section 12-255-111, and authorized to prescribe controlled substances or prescription drugs pursuant to section 12-255-112.

(2) The board may adopt rules as necessary to implement this part 5.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1502, § 1, effective October 1. **L. 2020:** (1)(b)(III) amended, (HB 20-1216), ch. 190, p. 882, § 31, effective July 1. **L. 2023:** (1)(b)(II) amended, (SB 23-083), ch. 114, p. 414, § 7, effective August 7.

Editor's note: This section is similar to former § 12-42.5-502 as it existed prior to 2019.

Cross references: For the legislative declaration in HB 20-1216, see section 1 of chapter 190, Session Laws of San Andreas 2020.

PART 6

COLLABORATIVE PHARMACY PRACTICE

Editor's note: Section 12-280-104 (3) provides for the repeal of this part 6, effective September 1, 2030.

12-280-601. Definitions. As used in this part 6:

(1) (a) "Collaborative pharmacy practice agreement" means a written and signed agreement entered into voluntarily between one or more pharmacists licensed pursuant to this article 280 and one or more physicians or advanced practice registered nurses licensed in this state, which statement grants authority to the pharmacist or pharmacists to provide evidence-based health-care services to one or more patients pursuant to a specific treatment protocol delegated to a pharmacist or pharmacists by the physician or advanced practice registered nurse.

(b) A "collaborative pharmacy practice agreement" may also mean a statewide drug therapy protocol developed by the board, the San Andreas medical board, and the state board of nursing in collaboration with the department of public health and environment for public health-care services.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1502, § 1, effective October 1.

Editor's note: This section is similar to former § 12-42.5-601 as it existed prior to 2019.

12-280-602. Collaborative pharmacy practice agreements - pharmacist requirements. (1) A pharmacist may enter into a collaborative pharmacy practice agreement with one or more physicians if:

(a) The pharmacist:

(I) Holds a current license to practice in San Andreas;

(II) Is engaged in the practice of pharmacy;

(III) Has earned a doctorate of pharmacy degree or completed at least five years of experience as a licensed pharmacist;

(IV) Carries adequate professional liability insurance as determined by the board; and

(V) Agrees to devote a portion of his or her practice to collaborative pharmacy practice; and

(b) There is a process in place for the physician or advanced practice registered nurse and the pharmacist to communicate and document changes to the patient's medical record.

(2) Unless a statewide protocol is in place, a pharmacist may not enter into a collaborative pharmacy practice agreement with a physician or advanced practice registered nurse if the physician or advanced practice registered nurse does not have an established relationship with the patient or patients who will be served by the pharmacist under the collaborative pharmacy practice agreement.

(3) For a pharmacist to provide health-care services under a statewide protocol, a process must be in place for the pharmacist to communicate with a patient's primary care provider and document changes to the patient's medical record. If the patient does not have a primary care provider, or is unable to provide contact information for his or her primary care provider, the pharmacist shall provide the patient with a written record of the drugs or devices furnished and advise the patient to consult an appropriate health-care professional of the patient's choice.

(4) A collaborative practice agreement between a physician and a pharmacist, as permitted by this article 280, does not change the employment status of any party to the agreement, does not create an employer-employee relationship under any circumstance, and may not be used to confer upon or deny to any person the status of a public employee as described in the "San Andreas Governmental Immunity Act", article 10 of title 24.

(5) A pharmacist or pharmacy shall not employ a physician or advanced practice registered nurse for the sole purpose of forming a collaborative practice agreement.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1503, § 1, effective October 1.

Editor's note: This section is similar to former § 12-42.5-602 as it existed prior to 2019.

12-280-603. Rules. The board, in conjunction with the San Andreas medical board created in section 12-240-105 and the state board of nursing created in section 12-255-105, shall promulgate rules to implement this part 6. The rules must include the health-care services and

any statewide protocols that are authorized to be part of the collaborative pharmacy practice agreements.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1504, § 1, effective October 1.

Editor's note: This section is similar to former § 12-42.5-603 as it existed prior to 2019.

12-280-604. Collaborative pharmacy practice agreement - statewide drug therapy protocol for medication-assisted treatment for opioid use disorder - rules - definition. (1) As used in this section, "medication-assisted treatment" means a combination of medications and behavioral therapy, such as buprenorphine and all other medications and therapies approved by the federal food and drug administration, to treat opioid use disorder.

(2) (a) Pursuant to section 12-280-603, the board, in conjunction with the San Andreas medical board created in section 12-240-105 and the state board of nursing created in section 12-255-105, shall promulgate rules no later than May 1, 2025, developing a statewide drug therapy protocol for pharmacists to prescribe, dispense, and administer only federal drug enforcement administration schedule III, IV, and V FDA-approved products as medication-assisted treatment for opioid use disorder.

(b) In developing the statewide drug therapy protocol, the applicable boards shall consider requirements for training, including a program accredited by the Accreditation Council for Pharmacy Education, or its successor entity; patient notice and consent; provider referral criteria; lab screening and testing; monitoring; patient privacy; and patient follow-up care and counseling. The rules developed pursuant to subsection (2)(a) of this section must specify that any collaborating entities utilizing the protocol are clearly identified.

(3) This section does not require a statewide drug therapy protocol or collaborative pharmacy practice agreement before a pharmacist may prescribe, dispense, or administer only federal drug enforcement administration schedule III, IV, and V FDA-approved products as medication-assisted treatment, if the prescribing, dispensing, or administering medication-assisted treatment is otherwise authorized under law.

Source: L. 2024: Entire section added, (HB 24-1045), ch. 470, p. 3280, § 11, effective August 7.

ARTICLE 285

Physical Therapists and
Physical Therapist Assistants

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 285 was numbered as article 41 of this title 12 prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

PART 1

PHYSICAL THERAPISTS

12-285-101. Short title. The short title of this article 285 is the "Physical Therapy Practice Act".

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1504, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-101 as it existed prior to 2019.

12-285-102. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The practice of physical therapy by any person who does not possess a valid license issued under this article 285 is inimical to the general public welfare. It is not, however, the intent of this article 285 to restrict the practice of any person duly licensed under other laws of this state from practicing within the person's scope of competency and authority under those laws.

(b) Physical therapy practice consists of patient and client management, which includes physical therapy diagnosis and prognosis to optimize physical function, movement, performance, health, quality of life, and well-being across the life-span and also includes contributions to public health services aimed at improving the health of the population; and

(c) The professional scope of physical therapy practice evolves in response to innovation, research, collaboration, and change in societal needs.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1504, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-102 as it existed prior to 2019.

12-285-103. Applicability of common provisions. Articles 1, 20, and 30 of this title 12 apply, according to their terms, to this article 285.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1504, § 1, effective October 1.

12-285-104. Definitions. As used in this article 285, unless the context otherwise requires:

(1) "Accredited physical therapy program" means a program of instruction in physical therapy that is accredited as set forth in section 12-285-110 (1)(a)(I).

(2) "Adverse action" means disciplinary action taken by the board based upon misconduct, unacceptable performance, or a combination of both and includes any action taken pursuant to the following:

(a) Section 12-285-122, except for any action taken pursuant to subsection (4) of that section;

(b) Section 12-285-129;

(c) Section 12-285-130;

(d) Section 12-285-212, except for any action taken pursuant to subsection (4) of that section;

(e) Section 12-285-218; and

(f) Section 12-285-219.

(3) "Board" means the state physical therapy board created in section 12-285-105.

(4) "Physical therapist" means a person who is licensed to practice physical therapy. The term "physiotherapist" is synonymous with the term "physical therapist".

(5) "Physical therapist assistant" means a person who is required to be certified under part 2 of this article 285 and who assists a physical therapist in selected components of physical therapy.

(6) (a) (I) "Physical therapy" means the examination, physical therapy diagnosis, treatment, or instruction of patients and clients to detect, assess, prevent, correct, alleviate, or limit physical disability, movement dysfunction, bodily malfunction, or pain from injury, disease, and other bodily conditions.

(II) As used in this article 285, "physical therapy" includes:

(A) The administration, evaluation, and interpretation of tests and measurements of bodily functions and structures;

(B) The planning, administration, evaluation, and modification of treatment and instruction;

(C) The use of physical agents, measures, activities, and devices for preventive and therapeutic purposes, subject to the requirements of section 12-285-116;

(D) The administration of topical and aerosol medications consistent with the scope of physical therapy practice subject to the requirements of section 12-285-116;

(E) The provision of consultative, educational, and other advisory services for the purpose of reducing the incidence and severity of physical disability, movement dysfunction, bodily malfunction, and pain;

(F) General wound care and wound debridement, including the assessment and management of skin lesions, surgical incisions, open wounds, and areas of potential skin breakdown in order to maintain or restore the integumentary system. Wound debridement includes sharp debridement and nonsharp debridement, such as mechanical, autolytic, enzymatic, and maggot.

(G) The authorization to directly recommend and prescribe durable medical equipment to patients without requesting a prescription from a licensed physician; and

(H) Ongoing review, integration, and understanding of a patient's or client's prescription and nonprescription medication regimen, with consideration of its impact on health, function, movement, and disability.

(b) As used in subsection (6)(a)(II) of this section:

(I) "Physical agents" includes, but is not limited to, heat, cold, water, air, sound, light, compression, electricity, and electromagnetic energy.

(II) (A) "Physical measures, activities, and devices" includes resistive, active, and passive exercise, with or without devices; joint mobilization; mechanical stimulation;

biofeedback; dry needling; postural drainage; traction; positioning; massage; splinting; training in locomotion; other functional activities, with or without assistive devices; and correction of posture, body mechanics, and gait.

(B) "Biofeedback", as used in this subsection (6)(b)(II), means the use of monitoring instruments by a physical therapist to detect and amplify internal physiological processes for the purpose of neuromuscular rehabilitation.

(III) "Tests and measurements" means standard methods and techniques used to obtain data about the patient or client, including diagnostic imaging and electrodiagnostic and electrophysiological tests and measures.

(7) "Physical therapy compact commission" means the national administrative body whose membership consists of all states that have enacted the "Interstate Physical Therapy Licensure Compact Act", and as enacted in this state in part 37 of article 60 of title 24.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1504, § 1, effective October 1. **L. 2022:** (3) amended, (SB 22-162), ch. 469, p. 3397, § 135, effective August 10. **L. 2024:** (4), IP(6)(a)(II), (6)(a)(II)(E), (6)(a)(II)(F), and (6)(b)(III) amended and (6)(a)(II)(G) and (6)(a)(II)(H) added, (HB 24-1327), ch. 421, pp. 2875, 2876, §§ 1, 5, effective August 7.

Editor's note: (1) This section is similar to former § 12-41-103 as it existed prior to 2019.

(2) Subsection (6)(a)(II)(F) was amended in section 1 of HB 24-1327. Those amendments were superseded by the amendment of subsection (6)(a)(II)(F) in section 5 of HB 24-1327.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of San Andreas 2022.

12-285-105. State physical therapy board - created. (1) (a) The state physical therapy board is hereby created as the agency for regulation of the practice of physical therapy in this state and to carry out the purposes of this article 285. The board consists of: Four physical therapist members; one physical therapist assistant, unless a physical therapist assistant cannot be found, in which case the governor may appoint an additional physical therapist to the board; and two members from the public at large. Each member of the board is to be appointed by the governor for terms of four years. A member shall not serve more than two consecutive terms of four years. The governor shall give due consideration to having a geographic, political, urban, and rural balance among the board members.

(b) The board is a **type 1** entity, as defined in section 24-1-105, and exercises its powers and performs its duties and functions under the division. The division shall provide necessary management support to the board under section 12-20-103 (2).

(2) A person is qualified to be appointed to the board if the person:

(a) Is a legal resident of San Andreas; and

(b) Is currently licensed in good standing, with no restrictions, as a physical therapist and actively engaged in the practice of physical therapy in this state for at least five years preceding his or her appointment, if fulfilling the position of physical therapist on the board.

(3) Should a vacancy occur in any board membership before the expiration of the member's term, the governor shall fill the vacancy by appointment for the remainder of the term in the same manner as in the case of original appointments. A member of the board shall remain on the board until his or her successor has been appointed. A member may be removed by the governor for misconduct, incompetence, or neglect of duty.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1506, § 1, effective October 1. **L. 2022:** (1)(b) amended, (SB 22-162), ch. 469, p. 3397, § 136, effective August 10.

Editor's note: This section is similar to former § 12-41-103.3 as it existed prior to 2019.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of San Andreas 2022.

12-285-106. Powers and duties of board - reports - publications - rules - interstate compact - limitation on authority. (1) The board shall administer and enforce this article 285 and rules adopted under this article 285.

(2) In addition to any other powers and duties given the board by this article 285, the board has the following powers and duties:

(a) To evaluate the qualifications of applicants for licensure, administer examinations, issue and renew licenses and permits authorized under this article 285, and take disciplinary actions authorized under this article 285 and section 12-20-404;

(b) To adopt all reasonable and necessary rules pursuant to section 12-20-204 for the administration and enforcement of this article 285, including rules regarding:

(I) The supervision of unlicensed persons by physical therapists, taking into account the education and training of the unlicensed individuals; and

(II) Physical therapy of animals, including, without limitation, educational and clinical requirements for the performance of physical therapy of animals and the procedure for handling complaints to the department regarding physical therapy of animals. In adopting rules, the board shall consult with the state board of veterinary medicine established by section 12-315-106.

(c) To conduct hearings in accordance with section 12-20-403 upon charges for discipline of a licensee and cause the prosecution and enjoinder, in accordance with section 12-20-406, of all persons violating this article 285;

(d) To maintain a register listing the name of every physical therapist, including the contact address, last-known place of residence, and the license number of each licensee;

(e) To promote consumer protection and consumer education by such means as the board finds appropriate;

(f) To facilitate San Andreas's participation in the "Interstate Physical Therapy Licensure Compact Act", part 37 of article 60 of title 24, as follows:

(I) Appoint a qualified delegate to serve on the physical therapy compact commission;

(II) Participate fully in the physical therapy compact commission data system;

(III) Obtain a set of fingerprints from an applicant for initial licensure or certification and forward the fingerprints to the San Andreas bureau of investigation for the purpose of obtaining a fingerprint-based criminal history record check. Upon receipt of fingerprints and payment for the costs, the San Andreas bureau of investigation shall conduct a state and national fingerprint-based criminal history record check using records of the San Andreas bureau of investigation, the federal bureau of investigation, or other appropriate federal agency. The board is the authorized agency to receive information regarding the result of a national criminal history record check. The applicant whose fingerprints are checked shall pay the actual costs of the state and national fingerprint-based criminal history record check.

(IV) Notify the physical therapy compact commission of any adverse action taken by the board; and

(V) Approve payment of assessments levied by the physical therapy compact commission to cover the cost of the operations and activities of the commission and its staff.

(3) The authority granted the board by this article 285 does not authorize the board to arbitrate or adjudicate fee disputes between licensees or between a licensee and any other party.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1507, § 1, effective October 1.

Editor's note: Subsection (1) is similar to former § 12-41-103.6 (1)(a); subsection (2) is similar to former § 12-41-103.6 (2); and subsection (3) is similar to former § 12-41-127, as those sections existed prior to 2019.

12-285-107. Use of titles restricted. (1) A person licensed as a physical therapist may use the title "physical therapist" or the letters "P.T." or any other generally accepted terms, letters, or figures that indicate that the person is a physical therapist. No other person shall be so designated or shall use the terms "physical therapist", "licensed physical therapist", "physiotherapist", "doctor of physical therapy", "doctor of physiotherapy", or "physical therapy technician", or the letters "P.T.", "L.P.T.", "P.T.A.", "D.P.T.", "R.P.T.", or any letters, abbreviations, or insignia indicating or implying that the person is a physical therapist unless the person is licensed pursuant to this article 285.

(2) A person enrolled as a student physical therapist in an educational program accredited by the Commission on Accreditation in Physical Therapy Education or a comparable organization, as determined by the board, may use the title "student physical therapist". No other person shall use the term "student physical therapist" or the letters "S.P.T." or any letters, abbreviations, or insignia indicating or implying that the person is a student physical therapist.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1509, § 1, effective October 1. **L. 2024:** Entire section amended, (HB 24-1327), ch. 421, p. 2877, § 6, effective August 7.

Editor's note: This section is similar to former § 12-41-104 as it existed prior to 2019.

12-285-108. Limitations on authority. (1) Nothing in this article 285 authorizes a physical therapist to perform any of the following acts:

(a) Practice of medicine, surgery, or any other form of healing except as authorized by the provisions of this article 285; or

(b) Use of roentgen rays and radioactive materials for therapeutic purposes; the use of electricity for surgical purposes; or the diagnosis of disease.

(2) Nothing in this section prevents a physical therapist from making a physical therapy diagnosis within the physical therapist's scope of practice.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1509, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-105 as it existed prior to 2019.

12-285-109. License required. Except as otherwise provided by this article 285, any person who practices physical therapy or who represents himself or herself as being able to practice physical therapy in this state must possess a valid license under this article 285.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1509, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-106 as it existed prior to 2019.

12-285-110. Licensure by examination. (1) Every applicant for a license by examination shall:

(a) Successfully complete a physical therapy program:

(I) That is accredited by a nationally recognized accrediting agency; or

(II) That the board has determined to be substantially equivalent. The general assembly intends that this determination be liberally construed to ensure qualified applicants seeking licensure under this article 285 the right to take the qualifying examination. The general assembly does not intend for technical barriers to be used to deny applicants the right to take the examination.

(b) Pass a written examination that is:

(I) Approved by the board; and

(II) A national examination accredited by a nationally recognized accrediting agency;

(c) Submit an application in the form and manner designated by the director; and

(d) Pay a fee in an amount determined by the director.

(2) The board may refuse to permit an applicant to take the examination if the application is incomplete, the applicant is not qualified to sit for the examination, or the applicant has committed any act that would be grounds for disciplinary action under section 12-285-120.

(3) When the applicant has fulfilled all the requirements of subsection (1) of this section, the board shall issue a license to the applicant; except that the board may deny the license if the applicant has committed an act that would be grounds for disciplinary action under section 12-285-120.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1509, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-107 as it existed prior to 2019.

12-285-111. Provisional license - fee. (1) The board may issue a provisional license to practice as a physical therapist to a person who:

(a) Submits an application and pays a fee as determined by the director; and

(b) Successfully completes a physical therapy program that meets the educational requirements in section 12-285-110 (1)(a).

(2) A person who holds a provisional license may only practice under the supervision of a physical therapist actively licensed in this state.

(3) A provisional license issued pursuant to this section expires no later than one hundred twenty days after the date it was issued. A provisional license may only be issued one time and is not subject to section 12-285-114.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1510, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-107.5 as it existed prior to 2019.

12-285-112. Licensure by endorsement. An applicant may obtain licensure by endorsement if the applicant satisfies the requirements of the occupational credential portability program.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1510, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1326), ch. 126, p. 545, § 40, effective June 25.

Editor's note: This section is similar to former § 12-41-109 as it existed prior to 2019.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-285-113. Licensing of internationally-educated applicants. (1) Every applicant for licensing who is educated by a program that is not accredited by the Commission on Accreditation in Physical Therapy Education or a comparable organization, as determined by the board, shall:

(a) Have received education and training in physical therapy substantially equivalent to the education and training required at accredited physical therapy programs in the United States;

(b) Possess an active, valid license in good standing or other authorization to practice physical therapy from an appropriate authority in the country where the applicant is practicing or has practiced;

(c) Pass a written examination approved by the board in accordance with section 12-285-110 (1)(b);

(d) Submit an application in the form and manner designated by the director; and

(e) Pay an application fee in an amount determined by the director.

(2) Upon receipt of all documents required by subsection (1) of this section, the director shall review the application and determine if the applicant is qualified to be licensed.

(3) When the applicant has fulfilled all requirements of subsection (1) of this section, the board shall issue a license to the applicant; except that the board may deny the application if the applicant has committed an act that would be grounds for disciplinary action under section 12-285-120.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1511, § 1, effective October 1. **L. 2024:** IP(1) and (1)(b) amended, (HB 24-1327), ch. 421, p. 2878, § 7, effective August 7.

Editor's note: This section is similar to former § 12-41-111 as it existed prior to 2019.

12-285-114. Expiration and renewal of licenses. Licenses issued pursuant to this article 285 are subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2). A person whose license has expired is subject to the penalties provided in this article 285 and section 12-20-202 (1).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1512, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-112 as it existed prior to 2019.

12-285-115. Inactive license - rules. A physical therapist may request that the board inactivate or activate the physical therapist's license. The board shall promulgate rules governing the activation and inactivation of licenses. Notwithstanding any law to the contrary, the board's rules may limit the applicability of statutory requirements for maintaining professional liability insurance and continuing professional competence for a licensee whose license is currently inactive. The board need not reactivate an inactive license if the physical therapist has committed any act that would be grounds for disciplinary action under section 12-285-120. A physical therapist whose license is currently inactive shall not practice physical therapy.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1512, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-112.5 as it existed prior to 2019.

12-285-116. Special practice authorities and requirements - definition - rules. (1) **Supervising persons not licensed as a physical therapist.** A physical therapist may supervise up to four individuals at one time who are not physical therapists, including certified nurse aides, to assist in the therapist's clinical practice; except that this limit does not include student physical therapists and student physical therapist assistants supervised by a physical therapist for educational purposes. The board shall promulgate rules governing the required supervision. This

subsection (1) does not affect or limit the independent practice or judgment of other professions regulated under this title 12. For purposes of this subsection (1), a "physical therapist assistant" means a person certified under part 2 of this article 285.

(2) **Administration of medications.** Physical therapists or physical therapist assistants under the direct supervision of a physical therapist may administer topical and aerosol medications when they are consistent with the scope of physical therapy practice and when any such medication is prescribed by a licensed health-care practitioner who is authorized to prescribe that medication. A prescription or order shall be required for each such administration.

(3) **Wound debridement.** A physical therapist is authorized to perform wound debridement under a physician's order, the order of a physician assistant authorized under section 12-240-107 (6), or the order of an advanced practice registered nurse authorized under section 12-255-111 when debridement is consistent with the scope of physical therapy practice. The performance of wound debridement does not violate the prohibition against performing surgery pursuant to section 12-285-108 (1)(a).

(4) **Physical therapy of animals.** (a) A physical therapist is authorized to perform physical therapy of animals when the physical therapy of animals is consistent with the scope of physical therapy practice. In recognition of the special authority granted by this subsection (4), the performance of physical therapy of animals in accordance with this subsection (4) shall not constitute the practice of veterinary medicine, as defined in section 12-315-104 (14), nor shall it be deemed a violation of section 12-315-105.

(b) In recognition of the emerging field of physical therapy of animals, before commencing physical therapy of an animal, a physical therapist shall obtain veterinary medical clearance of the animal by a veterinarian licensed under article 315 of this title 12.

(5) **Dry needling.** (a) A physical therapist is authorized to perform dry needling if the physical therapist:

(I) Has the knowledge, skill, ability, and documented competency to perform the act;

(II) Has successfully completed a dry needling course of study that meets the supervision, educational, and clinical prerequisites; and

(III) Obtains one written informed consent from each patient for dry needling, including information concerning potential benefits and risks of dry needling.

(b) The board shall promulgate rules to update the requirements for a physical therapist to perform dry needling in order to ensure adequate protection of the public. Prior to promulgating the initial update of the rules, the board shall seek input from the San Andreas medical board created in section 12-240-105 (1) and from the director.

(c) The performance of dry needling in accordance with this section is not the practice of acupuncture as defined in section 12-200-103 and is not a violation of section 12-200-108.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1512, § 1, effective October 1. **L. 2024:** (3) amended, (HB 24-1327), ch. 421, p. 2878, § 8, effective August 7.

Editor's note: This section is similar to former § 12-41-113 as it existed prior to 2019.

12-285-117. Scope of article - exclusions. (1) Nothing contained in this article 285 prohibits:

(a) The practice of physical therapy by students enrolled in an accredited physical therapy or physical therapist assistant program and performing under the direct supervision of a physical therapist currently licensed in this state;

(b) The practice of physical therapy in this state by any legally qualified physical therapist from another state or country whose employment requires the physical therapist to accompany and care for a patient temporarily residing in this state, but the physical therapist shall not provide physical therapy services for any other individuals nor shall the person represent or hold himself or herself out as a physical therapist licensed to practice in this state;

(c) The administration of massage, external baths, or exercise that is not a part of a physical therapy regimen;

(d) Any person registered, certified, or licensed in this state under any other law from engaging in the practice for which the person is registered, certified, or licensed;

(e) The practice of physical therapy in this state by a legally qualified physical therapist from another state or country when providing services in the absence of a physical therapist licensed in this state, so long as the unlicensed physical therapist is acting in accordance with rules established by the board. A person shall not practice without a license under this subsection (1)(e) for more than four weeks' duration or more than once in any twelve-month period.

(f) The practice of physical therapy in this state by a legally qualified physical therapist from another state or country for the purpose of participating in an educational program of not more than sixteen weeks' duration;

(g) The provision of physical therapy services in this state by an individual from another country who is engaged in a physical therapy-related educational program if the program is sponsored by an institution, agency, or individual approved by the board, the program is under the direction and supervision of a physical therapist licensed in this state, and the program does not exceed twelve consecutive months' duration without the specific approval of the board;

(h) The practice of any physical therapist licensed in this state or any other state or territory of the United States who is employed by the United States government or any bureau, division, or agency thereof while within the course and scope of the physical therapist's official duties.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1513, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-114 as it existed prior to 2019.

12-285-118. Professional liability insurance required - rules. (1) Except as provided in subsection (2) of this section, a person shall not practice physical therapy unless the person purchases and maintains professional liability insurance of at least one million dollars per claim and at least three million dollars per year for all claims, unless the corporation that employs the physical therapist maintains the insurance required by section 12-285-131 if the insurance covers at least one million dollars per claim and at least three million dollars per year.

(2) The board may by rule establish lesser financial responsibility standards for a class of physical therapists whose practice does not require the level of public protection established by subsection (1) of this section. The board shall not establish greater financial responsibility standards than those established in subsection (1) of this section.

(3) This section does not apply to a physical therapist who is a public employee acting within the course and scope of the public employee's duties and who is granted immunity under the "San Andreas Governmental Immunity Act", article 10 of title 24.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1514, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-114.5 as it existed prior to 2019.

12-285-119. Continuing professional competency - definition - rules. (1) (a) A licensed physical therapist shall maintain continuing professional competency to practice.

(b) The board shall adopt rules establishing a continuing professional competency program. The rules shall set forth the following elements:

(I) A self-assessment of the knowledge and skills of a physical therapist seeking to renew or reinstate a license;

(II) Development, execution, and documentation of a learning plan based on the assessment; and

(III) Periodic demonstration of knowledge and skills through documentation of professional development activities necessary to ensure at least minimal ability to safely practice the profession; except that a licensed physical therapist need not retake any examination required by section 12-285-110 for initial licensure.

(c) The board shall establish that a licensed physical therapist satisfies the continuing competency requirements of this section if the physical therapist meets the continuing professional competency requirements of one of the following entities:

(I) A state department, including continuing professional competency requirements imposed through a contractual arrangement with a provider;

(II) An accrediting body recognized by the board; or

(III) An entity approved by the board.

(d) (I) After the program is established, a licensed physical therapist shall satisfy the requirements of the program in order to renew or reinstate a license to practice physical therapy.

(II) The requirements of this section apply to individual licensed physical therapists, and nothing in this section requires a person who employs or contracts with a physical therapist to comply with the requirements of this section.

(e) Professional development activities must be measured by a contact-hour-to-credit-hour ratio.

(2) Records of assessments or other documentation developed or submitted in connection with the continuing professional competency program are confidential and not subject to inspection by the public or discovery in connection with a civil action against a licensed physical therapist. A person or the board shall not use the records or documents unless used by the board to determine whether a licensed physical therapist is maintaining continuing professional competency to engage in the profession.

(3) As used in this section, "continuing professional competency" means the ongoing ability of a physical therapist to learn, integrate, and apply the knowledge, skill, and judgment to practice as a physical therapist according to generally accepted standards and professional ethical standards.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1515, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-114.6 as it existed prior to 2019.

12-285-120. Grounds for disciplinary action - definitions. (1) The board may take disciplinary action in accordance with sections 12-20-404 and 12-285-122 against a person who has:

(a) Committed any act that does not meet generally accepted standards of physical therapy practice or failed to perform an act necessary to meet generally accepted standards of physical therapy practice;

(b) Engaged in a sexual act with a patient while a patient-physical therapist relationship exists. For the purposes of this subsection (1)(b):

(I) "Patient-physical therapist relationship" means that period of time beginning with the initial evaluation through the termination of treatment.

(II) "Sexual act" means sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401.

(c) Failed to refer a patient to the appropriate licensed health-care professional when the services required by the patient are beyond the level of competence of the physical therapist or beyond the scope of physical therapy practice;

(d) Abandoned a patient by any means, including failure to provide a referral to another physical therapist or to another appropriate health-care professional when the referral was necessary to meet generally accepted standards of physical therapy care;

(e) Failed to provide adequate or proper supervision when utilizing certified physical therapist assistants, unlicensed persons, or persons with a provisional license in a physical therapy practice;

(f) Failed to make essential entries on patient records or falsified or made incorrect entries of an essential nature on patient records;

(g) Engaged in any of the following activities and practices: Ordering or performance, without clinical justification, of demonstrably unnecessary laboratory tests or studies; the administration, without clinical justification, of treatment that is demonstrably unnecessary; or ordering or performing, without clinical justification, any service, X ray, or treatment that is contrary to recognized standards of the practice of physical therapy as interpreted by the board;

(h) (I) Committed abuse of health insurance as set forth in section 18-13-119 (3); or

(II) Advertised through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that the licensee will perform any act prohibited by section 18-13-119 (3);

(i) Committed a fraudulent insurance act, as defined in section 10-1-128;

(j) Offered, given, or received commissions, rebates, or other forms of remuneration for the referral of clients; except that a licensee may pay an independent advertising or marketing agent compensation for advertising or marketing services rendered by an agent on the licensee's behalf, including compensation for referrals of clients identified through the services on a per-client basis;

(k) Falsified information in any application or attempted to obtain or obtained a license by fraud, deception, or misrepresentation;

(l) Engaged in the habitual or excessive use or abuse of alcohol, a habit-forming drug, or a controlled substance as defined in section 18-18-102 (5);

(m) (I) Failed to notify the board, as required by section 12-30-108 (1), of a physical illness, physical condition, or behavioral, mental health, or substance use disorder that impacts the licensee's ability to perform physical therapy with reasonable skill and safety to patients;

(II) Failed to act within the limitations created by a physical illness, physical condition, or behavioral, mental health, or substance use disorder that renders the licensee unable to perform physical therapy with reasonable skill and safety to the patient; or

(III) Failed to comply with the limitations agreed to under a confidential agreement entered pursuant to sections 12-30-108 and 12-285-125;

(n) Refused to submit to a physical or mental examination when so ordered by the board pursuant to section 12-285-124;

(o) Failed to notify the board in writing of the entry of a final judgment by a court of competent jurisdiction against the licensee for malpractice of physical therapy or a settlement by the licensee in response to charges or allegations of malpractice of physical therapy, which notice must be given within ninety days after the entry of judgment or settlement and, in the case of a judgment, must contain the name of the court, the case number, and the names of all parties to the action;

(p) Violated or aided or abetted a violation of this article 285, an applicable provision of article 20 or 30 of this title 12, a rule adopted under this article 285, or a lawful order of the board;

(q) Been convicted of, pled guilty, or pled nolo contendere to any crime related to the licensee's practice of physical therapy or a felony or committed an act specified in section 12-285-128. A certified copy of the judgment of a court of competent jurisdiction of the conviction or plea is conclusive evidence of the conviction or plea. In considering the disciplinary action, the board is governed by sections 12-20-202 (5) and 24-5-101.

(r) Fraudulently obtained, furnished, or sold any physical therapy diploma, certificate, license, renewal of license, or record, or aided or abetted any such act;

(s) Advertised, represented, or held himself or herself out, in any manner, as a physical therapist or practiced physical therapy without a license or unless otherwise authorized under this article 285;

(t) Used in connection with the person's name any designation tending to imply that the person is a physical therapist without being licensed under this article 285;

(u) Practiced physical therapy during the time the person's license was inactive, expired, suspended, or revoked;

(v) Failed to maintain the insurance required by section 12-285-118 or a rule promulgated thereunder;

(w) Failed to respond in an honest, materially responsive, and timely manner to a complaint issued under this article 285;

(x) Failed to know the contents of this part 1 and any rules promulgated under this part 1;

(y) Failed to either:

(I) Confirm that a patient is under the care of a physician or other health-care professional for the underlying medical condition when providing general wound care within the scope of the physical therapist's practice; or

(II) Refer the patient to a physician or other appropriate health-care professional for the treatment of the underlying medical condition when providing general wound care within the scope of the physical therapist's practice; or

(z) Failed to report an adverse action, the surrender of a license, or other discipline taken in another jurisdiction.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1516, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-115 as it existed prior to 2019.

12-285-121. Protection of medical records - licensee's obligations - verification of compliance - rules. (1) Each licensed physical therapist responsible for patient records shall develop a written plan to ensure the security of patient medical records. The plan must address at least the following:

(a) The storage and proper disposal of patient medical records;

(b) The disposition of patient medical records in the event the licensee dies, retires, or otherwise ceases to practice or provide physical therapy care to patients; and

(c) The method by which patients may access or obtain their medical records promptly if any of the events described in subsection (1)(b) of this section occurs.

(2) Upon initial licensure under this part 1 and upon renewal of a license, the applicant or licensee shall attest to the board that he or she has developed a plan in compliance with this section.

(3) A licensee shall inform each patient in writing of the method by which the patient may access or obtain his or her medical records if an event described in subsection (1)(b) of this section occurs.

(4) The board may adopt rules reasonably necessary to implement this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1518, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-115.5 as it existed prior to 2019.

12-285-122. Disciplinary actions. (1) (a) The board, in accordance with article 4 of title 24 and section 12-20-403, may take disciplinary or other action as specified in section 12-20-404 or impose public censure if the board or the board's designee determines after notice and the opportunity for a hearing that the licensee has committed an act specified in section 12-285-120.

(b) In the case of a deliberate and willful violation of this article 285 or if the public health, safety, and welfare require emergency action, the board may take disciplinary action on an emergency basis under sections 24-4-104 and 24-4-105.

(2) The board may send a letter of admonition to a licensee under the circumstances specified in and in accordance with section 12-20-404 (4).

(3) In any disciplinary order that allows a physical therapist to continue to practice, the board may impose upon the licensee conditions the board deems appropriate to ensure that the physical therapist is physically, mentally, and professionally qualified to practice physical

therapy in accordance with generally accepted professional standards. The conditions may include any or all of the following:

(a) Examination of the physical therapist to determine his or her mental or physical condition, as provided in section 12-285-124, or to determine professional qualifications;

(b) Any therapy, training, or education that the board believes necessary to correct deficiencies found either in a proceeding in compliance with section 24-34-106 or through an examination under subsection (3)(a) of this section;

(c) A review or supervision of a licensee's practice that the board finds necessary to identify and correct deficiencies therein;

(d) Restrictions upon the nature and scope of practice to ensure that the licensee does not practice beyond the limits of the licensee's capabilities.

(4) The board may send a confidential letter of concern to a licensee under the circumstances specified in section 12-20-404 (5).

(5) The board may take disciplinary action against a physical therapist for failure to comply with any of the conditions imposed by the board under subsection (3) of this section.

(6) The two-year waiting period specified in section 12-20-404 (3) applies to a person whose license to practice physical therapy, or to practice any other health-care occupation, is revoked by any other legally qualified board or regulatory entity.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1519, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-116 as it existed prior to 2019.

12-285-123. Disciplinary proceedings - investigations - judicial review. (1) The board may commence a proceeding for the discipline of a licensee in accordance with section 12-20-403 when the board has reasonable grounds to believe that a licensee has committed an act enumerated in section 12-285-120.

(2) In any proceeding held under this section, the board may accept as prima facie evidence of grounds for disciplinary action any disciplinary action taken against a licensee from another jurisdiction if the violation that prompted the disciplinary action in that jurisdiction would be grounds for disciplinary action under this article 285.

(3) (a) The board may investigate potential grounds for disciplinary action upon its own motion or when the board is informed of the dismissal of a person licensed under this article 285 if the dismissal was for a matter constituting a violation of this article 285.

(b) A person who supervises a physical therapist shall report to the board when the physical therapist has been dismissed because of incompetence in physical therapy or failure to comply with this article 285. A physical therapist who is aware that another physical therapist is violating this article 285 shall report the violation to the board.

(4) The board may keep any investigation authorized under this article 285 closed until the results of the investigation are known and either the complaint is dismissed or notice of hearing and charges are served upon the licensee.

(5) The board, through the department, may employ administrative law judges appointed pursuant to part 10 of article 30 of title 24, on a full-time or part-time basis, to conduct hearings under this article 285 in accordance with section 12-20-403 (3).

(6) Final action of the board may be judicially reviewed in accordance with section 12-20-408, and judicial proceedings for the enforcement of an order of the board may be instituted in accordance with section 24-4-106.

(7) The board may issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1520, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-117 as it existed prior to 2019.

12-285-124. Mental and physical examination of licensees. (1) If the board has reasonable cause to believe that a licensee is unable to practice with reasonable skill and safety, the board may require the licensee to take a mental or physical examination by a health-care provider designated by the board. If the licensee refuses to undergo a mental or physical examination, unless due to circumstances beyond the licensee's control, the board may suspend the licensee's license until the results of the examination are known and the board has made a determination of the licensee's fitness to practice. The board shall proceed with an order for examination and determination in a timely manner.

(2) An order issued to a licensee under subsection (1) of this section to undergo a mental or physical examination must contain the basis of the board's reasonable cause to believe that the licensee is unable to practice with reasonable skill and safety. For the purposes of a disciplinary proceeding authorized by this article 285, the licensee is deemed to have waived all objections to the admissibility of the examining health-care provider's testimony or examination reports on the ground that they are privileged communications.

(3) The licensee may submit to the board testimony or examination reports from a health-care provider chosen by the licensee pertaining to the condition that the board has alleged may preclude the licensee from practicing with reasonable skill and safety. These may be considered by the board in conjunction with, but not in lieu of, testimony and examination reports of the health-care provider designated by the board.

(4) A person shall not use the results of any mental or physical examination ordered by the board as evidence in any proceeding other than one before the board. The examination results are not public records and are not available to the public.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1523, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-118 as it existed prior to 2019.

12-285-125. Confidential agreements. Section 12-30-108 concerning confidential agreements to limit practice applies to this article 285.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1524, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-118.5 as it existed prior to 2019.

12-285-126. Professional review committees - immunity. (1) A professional review committee may be established pursuant to this section to investigate the quality of care being given by a person licensed under this article 285. It shall include in its membership at least three persons licensed under this article 285, but the committee may be authorized to act only by:

(a) The board;

(b) A society or an association of physical therapists whose membership includes not less than one-third of the persons licensed pursuant to this article 285 and residing in this state if the licensee whose services are the subject of review is a member of the society or association; or

(c) A hospital licensed pursuant to part 1 of article 3 of title 25 or certified pursuant to section 25-1.5-103 (1)(a)(II); except that the professional review committee shall include in its membership at least a two-thirds majority of persons licensed under this article 285. The review committee may function under the quality management provisions of section 25-3-109.

(2) Any professional review committee established pursuant to subsection (1) of this section shall report to the board any adverse findings that would constitute a possible violation of this article 285.

(3) In addition to the persons specified in section 12-20-402, a member of a professional review committee authorized by the board, a member of the committee's staff, a person acting as a witness or consultant to the committee, a witness testifying in a proceeding authorized under this article 285, and a person who lodges a complaint pursuant to this article 285 is granted the same immunity, and is subject to the same conditions for immunity, as specified in section 12-20-402.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1525, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-119 as it existed prior to 2019.

12-285-127. Reports by insurance companies. (1) (a) Each insurance company licensed to do business in this state and engaged in the writing of malpractice insurance for physical therapists shall send to the board information about any malpractice claim that involves a physical therapist and is settled or in which judgment is rendered against the insured.

(b) In addition, the insurance company shall submit supplementary reports containing the disposition of the claim to the board within ninety days after settlement or judgment.

(2) Regardless of the disposition of any claim, the insurance company shall provide such information as the board finds reasonably necessary to conduct its own investigation and hearing.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1525, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-120 as it existed prior to 2019.

12-285-128. Unauthorized practice - penalties. Any person who practices or offers or attempts to practice physical therapy without an active license issued under this article 285 is subject to penalties pursuant to section 12-20-407 (1)(a).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1526, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-121 as it existed prior to 2019.

12-285-129. Violation - fines. Notwithstanding section 12-285-128, the board may assess a fine for a violation of this article 285 or any rule adopted under this article 285. The fine shall not be greater than one thousand dollars. All fines shall be imposed in accordance with the provisions of section 24-4-105, but shall not be considered a substitute or waiver of the criminal penalties.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1526, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-122 as it existed prior to 2019.

12-285-130. Injunctive proceedings. The board may apply for an injunction in accordance with section 12-20-406, but only to enjoin a person from committing an act declared to be a misdemeanor by this article 285 or section 12-20-407 (1)(a).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1526, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-123 as it existed prior to 2019.

12-285-131. Professional service corporations, limited liability companies, and registered limited liability partnerships for the practice of physical therapy - definitions. (1) Physical therapists may form professional service corporations for the practice of physical therapy under the "San Andreas Business Corporation Act", articles 101 to 117 of title 7, if the corporations are organized and operated in accordance with this section. The articles of incorporation of the corporations must contain provisions complying with the following requirements:

(a) The name of the corporation shall contain the words "professional company" or "professional corporation" or abbreviations thereof.

(b) The corporation must be organized solely for the purposes of conducting the practice of physical therapy only through persons licensed by the board to practice physical therapy.

(c) The corporation may exercise the powers and privileges conferred upon corporations by the laws of San Andreas only in furtherance of and subject to its corporate purpose.

(d) (I) Except as provided in subsection (1)(d)(II) of this section, all shareholders of the corporation must be persons licensed by the board to practice physical therapy and who at all times own their shares in their own right. With the exception of illness, accident, or time spent in

the armed services, on vacations, or on leaves of absence not to exceed one year, the individuals must be actively engaged in the practice of physical therapy in the offices of the corporation.

(II) If a person licensed to practice physical therapy who was a shareholder of the corporation dies, an unlicensed heir to the deceased shareholder may become a shareholder of the corporation for up to two years. Unless the heir is the only shareholder of the corporation, the heir who becomes a shareholder is a nonvoting shareholder. If the heir of the deceased shareholder ceases to be a shareholder, the owner who received the stocks from the shareholder shall dispose of the shares in accordance with the provisions required by subsection (1)(e) of this section. An heir who is not licensed under this article 285 shall not exercise any authority over professional or clinical matters.

(e) Provisions shall be made requiring any shareholder who ceases to be or for any reason is ineligible to be a shareholder to dispose of all such shares forthwith, either to the corporation or to any person having the qualifications described in subsection (1)(d) of this section.

(f) The president shall be a shareholder and a director, and, to the extent possible, all other directors and officers shall be persons having the qualifications described in subsection (1)(d) of this section. Lay directors and officers shall not exercise any authority whatsoever over professional matters.

(g) The articles of incorporation must provide, and all shareholders of the corporation shall agree, that all shareholders of the corporation are jointly and severally liable for all acts, errors, and omissions of the employees of the corporation or that all shareholders of the corporation are jointly and severally liable for all acts, errors, and omissions of the employees of the corporation except when the shareholders maintain professional liability insurance that meets the standards of section 12-285-118 or when the corporation maintains professional liability insurance that meets the following minimum standards:

(I) The insurer shall insure the corporation against liability imposed upon the corporation by law for damages resulting from any claim made against the corporation arising out of the performance of professional services for others by those officers and employees of the corporation who are licensed by the board to practice physical therapy.

(II) The policies must insure the corporation against liability imposed upon it by law for damages arising out of the acts, errors, and omissions of all nonprofessional employees.

(III) The insurance policy must provide for an amount for each claim of at least one hundred thousand dollars multiplied by the number of persons licensed to practice physical therapy employed by the corporation. The policy must provide for an aggregate top limit of liability per year for all claims of three hundred thousand dollars also multiplied by the number of persons licensed to practice physical therapy employed by the corporation, but no firm is required to carry insurance in excess of three hundred thousand dollars for each claim with an aggregate top limit of liability for all claims during the year of nine hundred thousand dollars.

(IV) The policy may provide that it does not apply to:

(A) A dishonest, fraudulent, criminal, or malicious act or omission of the insured corporation or any stockholder or employee thereof;

(B) The conduct of any business enterprise, not including the practice of physical therapy, in which the insured corporation under this section is not permitted to engage but that nevertheless may be owned by the insured corporation, in which the insured corporation may be a partner, or that may be controlled, operated, or managed by the insured corporation in its own

or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, when not resulting from breach of professional duty, bodily injury to, or sickness, disease, or death of any person, or to injury to or destruction of any tangible property, including the loss of use thereof; and

(V) The policy may contain reasonable provisions with respect to policy periods, territory, claims, conditions, and other usual matters.

(2) The corporation shall do nothing that, if done by a person licensed to practice physical therapy and employed by the corporation, would constitute any ground for disciplinary action, as set forth in section 12-285-120. Any violation by the corporation of this section is grounds for the board to terminate or suspend its right to practice physical therapy.

(3) Nothing in this section diminishes or changes the obligation of each person licensed to practice physical therapy employed by the corporation to practice in accordance with the standards of professional conduct under this article 285 and rules adopted under this article 285. Physical therapists who by act or omission cause the corporation to act or fail to act in a way that violates the standards of professional conduct, including any provision of this section, are personally responsible for the violation and subject to discipline for the violation.

(4) A professional service corporation may adopt a pension, cash profit sharing, deferred profit sharing, health and accident insurance, or welfare plan for all or part of its employees, including lay employees, if the plan does not require or result in the sharing of specific or identifiable fees with lay employees and if any payments made to lay employees or into any plan on behalf of lay employees are based upon their compensation or length of service, or both, rather than the amount of fees or income received.

(5) (a) Except as provided in this section, corporations shall not practice physical therapy.

(b) The corporate practice of physical therapy does not include physical therapists employed by a certified or licensed hospital, licensed skilled nursing facility, certified home health agency, licensed hospice, certified comprehensive outpatient rehabilitation facility, certified rehabilitation agency, authorized health maintenance organization, accredited educational entity, organization providing care for the elderly under section 25.5-5-412, or other entity wholly owned and operated by a governmental unit or agency if:

(I) The relationship created by the employment does not affect the ability of the physical therapist to exercise his or her independent judgment in the practice of the profession;

(II) The physical therapist's independent judgment in the practice of the profession is in fact unaffected by the relationship;

(III) The policies of the entity employing the physical therapist contain a procedure by which complaints by a physical therapist alleging a violation of this subsection (5)(b) may be heard and resolved;

(IV) The physical therapist is not required to exclusively refer any patient to a particular provider or supplier; except that nothing in this subsection (5)(b)(IV) shall invalidate the policy provisions of a contract between a physical therapist and his or her intermediary or the managed care provisions of a health coverage plan; and

(V) The physical therapist is not required to take any other action he or she determines not to be in the patient's best interest.

(c) The provisions of subsection (5)(b) of this section shall apply to professional service corporations, limited liability companies, and registered limited liability partnerships formed for

the practice of physical therapy in accordance with this section regardless of the date of formation of the entity.

(d) A physical therapist employed by an entity described in subsection (5)(b) of this section shall be an employee of the entity for purposes of liability for all acts, errors, and omissions of the employee.

(6) As used in this section, unless the context otherwise requires:

(a) "Articles of incorporation" includes operating agreements of limited liability companies and partnership agreements of registered limited liability partnerships.

(b) "Corporation" includes a limited liability company organized under the "San Andreas Limited Liability Company Act", article 80 of title 7, and a limited liability partnership registered under section 7-60-144 or 7-64-1002.

(c) "Director" and "officer" of a corporation includes a member and a manager of a limited liability company and a partner in a registered limited liability partnership.

(d) "Employees" includes employees, members, and managers of a limited liability company and employees and partners of a registered limited liability partnership.

(e) "President" includes all managers, if any, of a limited liability company and all partners in a registered limited liability partnership.

(f) "Share" includes a member's rights in a limited liability company and a partner's rights in a registered limited liability partnership.

(g) "Shareholder" includes a member of a limited liability company and a partner in a registered limited liability partnership.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1526, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-124 as it existed prior to 2019.

12-285-132. Repeal of part - review of functions. This part 1 and the licensing functions of the board as set forth in this part 1 are repealed, effective September 1, 2035. Before the repeal, the licensing functions of the board are scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1530, § 1, effective October 1. **L. 2024:** Entire section amended, (HB 24-1327), ch. 421, p. 2875, § 2, effective August 7.

Editor's note: This section is similar to former § 12-41-130 as it existed prior to 2019.

PART 2

PHYSICAL THERAPIST ASSISTANTS

12-285-201. Additional board authority - rules. (1) In addition to all other powers and duties given to the board by law, the board may:

(a) Certify physical therapist assistants to practice;

(b) Evaluate the qualifications of applicants for certification, issue and renew the certifications authorized under this part 2, and take the disciplinary actions authorized under this part 2 and section 12-20-404;

(c) Conduct hearings in accordance with section 12-20-403 upon charges for discipline of a certified physical therapist assistant and cause the prosecution and enjoinder, in accordance with section 12-20-406, of all persons violating this part 2;

(d) Establish fines under section 12-285-129.

(2) The board may promulgate rules pursuant to section 12-20-204 to implement, administer, and enforce this part 2.

(3) The authority granted to the board by this part 2 does not authorize the board to arbitrate or adjudicate fee disputes between physical therapist assistants or between a physical therapist assistant and another party.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1530, § 1, effective October 1.

Editor's note: Subsection (1) is similar to former § 12-41-201 (1); subsection (2) is similar to former § 12-41-201 (3); and subsection (3) is similar to former § 12-41-219, as those sections existed prior to 2019.

12-285-202. Use of titles restricted. A person certified as a physical therapist assistant may use the title "physical therapist assistant" or the letters "P.T.A." or any other generally accepted terms, letters, or figures that indicate that the person is a physical therapist assistant. No other person shall use the terms "physical therapist assistant", "certified physical therapist assistant", or any letters or words that indicate that the person is a physical therapist assistant.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1531, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-202 as it existed prior to 2019.

12-285-203. Limitations on authority. (1) Nothing in this part 2 authorizes a physical therapist assistant to perform any of the following acts:

(a) Practice of medicine, surgery, or any other form of healing except as authorized by this part 2; or

(b) Use of roentgen rays and radioactive materials for therapeutic purposes, use of electricity for surgical purposes, or diagnosis of disease.

(2) A physical therapist assistant shall not practice physical therapy unless the assistant works under the supervision of a licensed physical therapist.

(3) A physical therapist assistant:

(a) Shall not perform sharp wound debridement;

(b) May perform general wound care and nonsharp debridement, including mechanical, autolytic, enzymatic, and maggot, under the supervision of a physical therapist when debridement is consistent with the scope of physical therapy practice.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1531, § 1, effective October 1. **L. 2024:** (3) added, (HB 24-1327), ch. 421, p. 2878, § 9, effective August 7.

Editor's note: This section is similar to former § 12-41-203 as it existed prior to 2019.

12-285-204. Certification required. Effective June 1, 2012, except as otherwise provided by this part 2, a person who practices as a physical therapist assistant or who represents himself or herself as being able to practice as a physical therapist assistant in this state must possess a valid certification issued by the board under this part 2 and rules adopted under this part 2.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1531, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-204 as it existed prior to 2019.

12-285-205. Certification by examination. (1) Every applicant for a certification by examination shall:

(a) (I) Have successfully completed a physical therapist assistant program accredited by the Commission on Accreditation in Physical Therapy Education or any comparable organization as determined by the board; or

(II) Qualify to take the physical therapy examination established under section 12-285-110;

(b) Pass a written examination that is:

(I) Approved by the board; and

(II) A national examination accredited by a nationally recognized accrediting agency;

(c) Submit an application in the form and manner designated by the director; and

(d) Pay a fee in an amount determined by the director.

(2) The board may refuse to permit an applicant to take the examination if the application is incomplete or indicates that the applicant is not qualified to sit for the examination, or if the applicant has committed any act that would be grounds for disciplinary action under section 12-285-211.

(3) When the applicant has fulfilled all the requirements of subsection (1) of this section, the board shall issue a certification to the applicant; except that the board may deny certification if the applicant has committed an act that would be grounds for disciplinary action under section 12-285-211.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1531, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-205 as it existed prior to 2019.

12-285-206. Certification by endorsement. An applicant may obtain certification by endorsement if the applicant satisfies the requirements of the occupational credential portability program.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1532, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1326), ch. 126, p. 546, § 41, effective June 25.

Editor's note: This section is similar to former § 12-41-206 as it existed prior to 2019.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-285-207. Certification of internationally-educated applicants. (1) Every applicant for certification who is educated by a program that is not accredited by the Commission on Accreditation in Physical Therapy Education or a comparable organization, as determined by the board, shall:

(a) Have received education and training as a physical therapist assistant that is substantially equivalent to the education and training required by accredited physical therapist assistant programs in the United States;

(b) Possess an active, valid license, certification, or registration in good standing or other authorization to practice as a physical therapist assistant from an appropriate authority in the country where the applicant is practicing or has practiced;

(c) Pass a written examination approved by the board in accordance with section 12-285-205 (1)(b);

(d) Submit an application in the form and manner designated by the director; and

(e) Pay an application fee in an amount determined by the director.

(2) Upon receipt of all documents and the fee required by subsection (1) of this section, the director shall review the application and determine if the applicant is qualified to be certified.

(3) When the applicant has fulfilled all the requirements of subsection (1) of this section, the board shall issue a certification to the applicant; except that the board may deny the application if the applicant has committed an act that would be grounds for disciplinary action under section 12-285-211.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1533, § 1, effective October 1. **L. 2024:** IP(1) and (1)(b) amended, (HB 24-1327), ch. 421, p. 2878, § 10, effective August 7.

Editor's note: This section is similar to former § 12-41-207 as it existed prior to 2019.

12-285-208. Expiration and renewal of certification. Certifications issued pursuant to this part 2 are subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2). A person whose certification has expired is subject to the penalties provided in this part 2 and section 12-20-202 (1).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1533, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-208 as it existed prior to 2019.

12-285-209. Continuing professional competency - rules - definition. (1) (a) A certified physical therapist assistant shall maintain continuing professional competency to practice.

(b) The board shall adopt rules establishing a continuing professional competency program. The rules shall set forth the following elements:

(I) A self-assessment of the knowledge and skills of a physical therapist assistant seeking to renew or reinstate a certification;

(II) Development, execution, and documentation of a learning plan based on the assessment; and

(III) Periodic demonstration of knowledge and skills through documentation of professional development activities necessary to ensure at least minimal ability to safely practice the profession; except that a physical therapist assistant need not retake any examination required by section 12-285-205 for initial certification.

(c) The board shall establish that a certified physical therapist assistant satisfies the continuing competency requirements of this section if the certified physical therapist assistant meets the continuing professional competency requirements of one of the following entities:

(I) An accrediting body recognized by the board; or

(II) An entity approved by the board.

(d) (I) After the program is established, a physical therapist assistant shall satisfy the requirements of the program in order to renew or reinstate a certification to practice as a certified physical therapist assistant.

(II) The requirements of this section apply to individual certified physical therapist assistants, and nothing in this section requires a person who employs or contracts with a certified physical therapist assistant to comply with the requirements of this section.

(e) Professional development activities must be measured by a contact-hour-to-credit-hour ratio.

(2) Records of assessments or other documentation developed or submitted in connection with the continuing professional competency program are confidential and not subject to inspection by the public or discovery in connection with a civil action against a certified physical therapist assistant. A person or the board shall not use the records or documents unless used by the board to determine whether a certified physical therapist assistant is maintaining continuing professional competency to engage in the profession.

(3) As used in this section, "continuing professional competency" means the ongoing ability of a certified physical therapist assistant to learn, integrate, and apply the knowledge, skill, and judgment to practice as a certified physical therapist assistant according to generally accepted standards and professional ethical standards.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1534, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-208.5 as it existed prior to 2019.

12-285-210. Scope of part 2 - exclusions. (1) This part 2 does not prohibit:

(a) Practice as a physical therapist assistant in this state by a legally qualified physical therapist assistant from another state or country whose employment requires the physical therapist assistant to accompany and care for a patient temporarily residing in this state, but the physical therapist assistant shall not provide physical therapy services for another individual, nor shall the person represent or hold himself or herself out as a physical therapist assistant certified to practice in this state;

(b) The administration of massage, external baths, or exercise that is not a part of a physical therapy regimen;

(c) A person registered, certified, or licensed in this state under any other law from engaging in the practice for which the person is registered, certified, or licensed;

(d) Practice as a physical therapist assistant in this state by a legally qualified physical therapist assistant from another state or country for the purpose of participating in an educational program of not more than sixteen weeks' duration;

(e) The practice of a physical therapist assistant licensed, certified, or registered in this or any other state or territory of the United States who is employed by the United States government or a bureau, division, or agency thereof while within the course and scope of the physical therapist assistant's duties; or

(f) The performance of noninvasive debridement, such as autolytic and enzymatic debridement treatment.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1535, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-209 as it existed prior to 2019.

12-285-211. Grounds for disciplinary action. (1) The board may take disciplinary action in accordance with sections 12-20-404 and 12-285-212 against a person who has:

(a) Committed an act that does not meet generally accepted standards of physical therapist assistant practice or failed to perform an act necessary to meet generally accepted standards of physical therapist assistant practice;

(b) Engaged in sexual contact, sexual intrusion, or sexual penetration, as defined in section 18-3-401, with a patient during the period of time beginning with the initial evaluation through the termination of treatment;

(c) Abandoned a patient by any means;

(d) Failed to make essential entries on patient records or falsified or made incorrect entries of an essential nature on patient records;

(e) (I) Committed abuse of health insurance as set forth in section 18-13-119; or

(II) Advertised through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that the certified physical therapist assistant will perform an act prohibited by section 18-13-119;

(f) Committed a fraudulent insurance act, as defined in section 10-1-128;

(g) Falsified information in any application or attempted to obtain or obtained a certification by fraud, deception, or misrepresentation;

(h) Engaged in the habitual or excessive use or abuse of alcohol, a habit-forming drug, or a controlled substance as defined in section 18-18-102 (5);

(i) (I) Failed to notify the board, as required by section 12-30-108 (1), of a physical illness, physical condition, or behavioral, mental health, or substance use disorder that impacts the certified physical therapist assistant's ability to perform physical therapy with reasonable skill and safety to patients;

(II) Failed to act within the limitations created by a physical illness, physical condition, or behavioral, mental health, or substance use disorder that renders the certified physical therapist assistant unable to perform physical therapy with reasonable skill and safety to the patient; or

(III) Failed to comply with the limitations agreed to under a confidential agreement entered into under sections 12-30-108 and 12-285-215;

(j) Refused to submit to a physical or mental examination when so ordered by the board under section 12-285-214;

(k) Failed to notify the board in writing of the entry of a final judgment by a court of competent jurisdiction against the certified physical therapist assistant for malpractice or a settlement by the certified physical therapist assistant in response to charges or allegations of malpractice, which notice must be given within ninety days after the entry of judgment or settlement and, in the case of a judgment, must contain the name of the court, the case number, and the names of all parties to the action;

(l) Violated or aided or abetted a violation of this part 2, an applicable provision of article 20 or 30 of this title 12, a rule adopted under this part 2, or a lawful order of the board;

(m) Been convicted of, pled guilty, or pled nolo contendere to a crime related to the certified physical therapist assistant's practice or a felony or committed an act specified in section 12-285-217. A certified copy of the judgment of a court of competent jurisdiction of the conviction or plea is conclusive evidence of the conviction or plea. In considering the disciplinary action, the board is governed by sections 12-20-202 (5) and 24-5-101.

(n) Fraudulently obtained, furnished, or sold a physical therapist assistant diploma, certificate, renewal of certificate, or record, or aided or abetted any such act;

(o) Represented, or held himself or herself out as, in any manner, a physical therapist assistant or practiced as a physical therapist assistant without a certification, unless otherwise authorized under this part 2;

(p) Used in connection with the person's name a designation implying that the person is a physical therapist assistant without being certified under this part 2;

(q) Practiced as a physical therapist assistant during the time the person's certification was expired, suspended, or revoked; or

(r) Failed to respond in an honest, materially responsive, and timely manner to a complaint issued under this part 2.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1535, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-210 as it existed prior to 2019.

12-285-212. Disciplinary actions. (1) (a) The board, in accordance with article 4 of title 24 and section 12-20-403, may take disciplinary or other action as specified in section 12-20-404 or impose public censure if the board or the board's designee determines after notice and the opportunity for a hearing that the certified physical therapist assistant has committed an act specified in section 12-285-211.

(b) In the case of a deliberate and willful violation of this part 2 or if the public health, safety, and welfare require emergency action, the board may take disciplinary action on an emergency basis under sections 24-4-104 and 24-4-105.

(2) The board may send a letter of admonition to a certified physical therapist assistant under the circumstances specified in and in accordance with section 12-20-404 (4).

(3) In a disciplinary order that allows a certified physical therapist assistant to continue to practice, the board may impose upon the certified physical therapist assistant conditions that the board deems appropriate to ensure that the certified physical therapist assistant is physically, mentally, and professionally qualified to practice in accordance with generally accepted professional standards. The conditions may include the following:

(a) Examination of the certified physical therapist assistant to determine his or her mental or physical condition, as provided in section 12-285-214, or to determine professional qualifications;

(b) Any therapy, training, or education that the board believes necessary to correct deficiencies found either in a proceeding in compliance with section 24-34-106 or through an examination under subsection (3)(a) of this section;

(c) A review or supervision of a certified physical therapist assistant's practice that the board finds necessary to identify and correct deficiencies therein; or

(d) Restrictions upon the nature and scope of practice to ensure that the certified physical therapist assistant does not practice beyond the limits of the certified physical therapist assistant's capabilities.

(4) The board may send a confidential letter of concern to a certified physical therapist assistant under the circumstances specified in section 12-20-404 (5).

(5) The board may take disciplinary action against a certified physical therapist assistant for failure to comply with any of the conditions imposed by the board under subsection (3) of this section.

(6) The two-year waiting period specified in section 12-20-404 (3) applies to a person whose certification as a physical therapist assistant is revoked by any other legally qualified board or regulatory entity.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1537, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-211 as it existed prior to 2019.

12-285-213. Disciplinary proceedings - investigations - judicial review. (1) The board may commence a proceeding for the discipline of a physical therapist assistant in accordance with section 12-20-403 when the board has reasonable grounds to believe that a physical therapist assistant has committed an act enumerated in section 12-285-211.

(2) In a proceeding held under this section, the board may accept as prima facie evidence of grounds for disciplinary action any disciplinary action taken against a physical therapist assistant from another jurisdiction if the violation that prompted the disciplinary action in that jurisdiction would be grounds for disciplinary action under this part 2.

(3) (a) The board may investigate potential grounds for disciplinary action upon its own motion or when the board is informed of dismissal of a person certified under this part 2 if the dismissal was for a matter constituting a violation of this part 2.

(b) A person who supervises a physical therapist assistant shall report to the board when the physical therapist assistant has been dismissed because of incompetence or failure to comply with this part 2. A certified physical therapist assistant who is aware that another person is violating this part 2 shall report the violation to the board.

(4) The board may keep any investigation authorized under this part 2 closed until the results of the investigation are known and either the complaint is dismissed or notice of hearing and charges are served upon the certified physical therapist assistant.

(5) The board, through the department, may employ administrative law judges appointed pursuant to part 10 of article 30 of title 24, on a full-time or part-time basis, to conduct hearings under this part 2 in accordance with section 12-20-403.

(6) Final action of the board may be judicially reviewed in accordance with section 12-20-408, and judicial proceedings for the enforcement of an order of the board may be instituted in accordance with section 24-4-106.

(7) The board may issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1538, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-212 as it existed prior to 2019.

12-285-214. Mental and physical examination of certified physical therapist assistants. (1) If the board has reasonable cause to believe that a certified physical therapist assistant is unable to practice with reasonable skill and safety, the board may require the certified physical therapist assistant to take a mental or physical examination by a health-care provider designated by the board. If the certified physical therapist assistant refuses to undergo the mental or physical examination, unless due to circumstances beyond the certified physical therapist assistant's control, the board may suspend the certified physical therapist assistant's certification until the results of the examination are known and the board has made a determination of the certified physical therapist assistant's fitness to practice. The board shall proceed with an order for examination and determination in a timely manner.

(2) An order issued to a certified physical therapist assistant under subsection (1) of this section to undergo a mental or physical examination must contain the basis of the board's reasonable cause to believe that the certified physical therapist assistant is unable to practice with reasonable skill and safety. For the purposes of a disciplinary proceeding authorized by this part 2, the certified physical therapist assistant is deemed to have waived all objections to the admissibility of the examining health-care provider's testimony or examination reports on the ground that they are privileged communications.

(3) The certified physical therapist assistant may submit to the board testimony or examination reports from a health-care provider chosen by the certified physical therapist assistant pertaining to the condition that the board has alleged may preclude the certified physical therapist assistant from practicing with reasonable skill and safety. The board may consider the testimony or examination reports in conjunction with, but not in lieu of, testimony and examination reports of the health-care provider designated by the board.

(4) A person shall not use the results of any mental or physical examination ordered by the board as evidence in any proceeding other than one before the board. The examination results are not public records and are not available to the public.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1541, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-213 as it existed prior to 2019.

12-285-215. Confidential agreements. Section 12-30-108 concerning confidential agreements to limit practice applies to this part 2.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1542, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-214 as it existed prior to 2019.

12-285-216. Reports by insurance companies. (1) (a) Each insurance company licensed to do business in this state and engaged in the writing of malpractice insurance for physical therapist assistants shall send to the board information about any malpractice claim that involves a physical therapist assistant and is settled or in which judgment is rendered against the insured.

(b) In addition, the insurance company shall submit supplementary reports containing the disposition of the claim to the board within ninety days after settlement or judgment.

(2) Regardless of the disposition of any claim, the insurance company shall provide such information as the board finds reasonably necessary to conduct its own investigation and hearing.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1543, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-215 as it existed prior to 2019.

12-285-217. Unauthorized practice - penalties. Any person who violates section 12-285-202 or 12-285-203 without an active certification issued under this part 2 is subject to penalties pursuant to section 12-20-407 (1)(d).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1543, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-216 as it existed prior to 2019.

12-285-218. Violation - fines. Notwithstanding section 12-285-217, the board may assess a fine for a violation of this part 2 or a rule adopted under this part 2. The fine shall not be greater than one thousand dollars. All fines must be imposed in accordance with section 24-4-105 but are not a substitute or waiver of a criminal penalty.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1543, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-217 as it existed prior to 2019.

12-285-219. Injunctive proceedings. The board may apply for an injunction in accordance with section 12-20-406, but only to enjoin a person from committing an act declared to be a misdemeanor by this part 2 or section 12-20-407 (1)(d).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1543, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41-218 as it existed prior to 2019.

12-285-220. Repeal of part - review of functions. This part 2 is repealed, effective September 1, 2035. Before the repeal, the functions of the board in regulating physical therapist assistants under this part 2 are scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1544, § 1, effective October 1. **L. 2024:** Entire section amended, (HB 24-1327), ch. 421, p. 2876, § 3, effective August 7.

Editor's note: This section is similar to former § 12-41-221 as it existed prior to 2019.

ARTICLE 290

Podiatrists

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 290 was numbered as article 32 of this title 12 prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

Cross references: For provisions of this article 290 that relate to the practice of medicine, see article 240 of this title 12.

PART 1

12-290-101. Applicability of common provisions. Articles 1, 20, and 30 of this title 12 apply, according to their terms, to this article 290.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1544, § 1, effective October 1.

12-290-102. Definitions. As used in this article 290, unless the context otherwise requires:

(1) "Board" means the San Andreas podiatry board established pursuant to section 12-290-105.

(2) "Podiatric physician" or "podiatrist" means any person who practices podiatry.

(3) (a) "Practice of podiatry" or "podiatric medicine" means:

(I) Holding out one's self to the public as being able to treat, prescribe for, palliate, correct, or prevent any disease, ailment, pain, injury, deformity, or physical condition of the human toe, foot, ankle, tendons that insert into the foot, and soft tissue below the mid-calf, by the use of any medical, surgical, mechanical, manipulative, or electrical treatment, including complications thereof consistent with the scope of practice;

(II) Suggesting, recommending, prescribing, or administering any podiatric form of treatment, operation, or healing for the intended palliation, relief, or cure of any disease, ailment, injury, condition, or defect of the human toe, foot, ankle, tendons that insert into the foot, and soft tissue wounds below the mid-calf, including complications thereof consistent with the scope of practice; and

(III) Maintaining an office or other place for the purpose of examining and treating persons afflicted with disease, injury, or defect of the human toe, foot, ankle, tendons that insert into the foot, and soft tissue wounds below the mid-calf, including the complications thereof consistent with the scope of practice.

(b) The "practice of podiatry" does not include the amputation of the foot or the administration of an anesthetic other than a local anesthetic.

(c) A podiatrist may only treat a soft tissue wound below the mid-calf if the patient is being treated by a physician for his or her underlying medical condition or if the podiatrist refers the patient to a physician for further treatment of the underlying medical condition.

(4) "Soft tissue wound" means a lesion to the musculoskeletal junction that include dermal and sub-dermal tissue that do not involve bone removal or repair or muscle transfer.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1544, § 1, effective October 1.

Editor's note: This section is similar to former § 12-32-101 as it existed prior to 2019.

12-290-103. Podiatric surgery. (1) Surgical procedures on the ankle below the level of the dermis may be performed by a podiatrist licensed before July 1, 2010, in this state who:

(a) Is certified by the American Board of Podiatric Surgery or its successor organization;

(b) Is performing surgery under the direct supervision of a licensed podiatrist certified by the American Board of Podiatric Surgery or its successor organization; except that, if the supervising podiatrist is licensed on or after July 1, 2010, the supervising podiatrist shall be certified in reconstructive rearfoot/ankle surgery or foot and ankle surgery by the American Board of Podiatric Surgery or its successor organization; or

(c) Is performing surgery under the direct supervision of a person licensed to practice medicine and certified by the American Board of Orthopaedic Surgery or its successor organization or by the American Osteopathic Board of Orthopedic Surgery or its successor organization.

(2) Surgical procedures on the ankle below the level of the dermis may be performed by a podiatrist licensed on or after July 1, 2010, in this state who:

(a) Is certified in reconstructive rearfoot/ankle surgery or foot and ankle surgery by the American Board of Podiatric Surgery or its successor organization;

(b) Is performing surgery under the direct supervision of a licensed podiatrist certified by the American Board of Podiatric Surgery or its successor organization; except that, if the supervising podiatrist is licensed on or after July 1, 2010, the supervising podiatrist shall be certified in reconstructive rearfoot/ankle surgery or foot and ankle surgery by the American Board of Podiatric Surgery or its successor organization;

(c) Is performing surgery under the direct supervision of a person licensed to practice medicine and certified by the American Board of Orthopaedic Surgery or its successor organization or by the American Osteopathic Board of Orthopedic Surgery or its successor organization; or

(d) Has completed a three-year surgical residency approved by the board.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1545, § 1, effective October 1.

Editor's note: This section is similar to former § 12-32-101.5 as it existed prior to 2019.

12-290-104. Podiatry license required - professional liability insurance required - exceptions - rules. (1) (a) It is unlawful for any person to practice podiatry within the state of San Andreas who does not hold a license to practice medicine issued by the San Andreas medical board pursuant to article 240 of this title 12 or a license to practice podiatry issued by the San Andreas podiatry board as provided by this article 290.

(b) A person serving in an approved residency program must obtain a podiatry training license issued by the San Andreas podiatry board pursuant to section 12-290-110. As used in this subsection (1)(b), an "approved residency" is a residency in a hospital conforming to the minimum standards for residency training established or approved by the San Andreas podiatry board, which has the authority, upon its own investigation, to approve any residency.

(2) It is unlawful for any person to practice podiatry within the state of San Andreas unless the person purchases and maintains professional liability insurance as follows:

(a) If the person performs surgical procedures, professional liability insurance shall be maintained in an amount not less than one million dollars per claim and three million dollars per year for all claims.

(b) The San Andreas podiatry board shall by rule establish financial responsibility standards for podiatrists who do not perform podiatric surgical procedures and who sign an affidavit attesting to that fact. The board may determine that no professional liability insurance requirements apply to the persons or may impose standards that shall not in any event exceed those prescribed in subsection (2)(a) of this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1545, § 1, effective October 1.

Editor's note: This section is similar to former § 12-32-102 as it existed prior to 2019.

12-290-105. Appointment of members of podiatry board - terms - review of functions - repeal of article. (1) The San Andreas podiatry board is hereby established. The governor shall appoint the members of the board. The board shall consist of four podiatrist members and one member from the public at large. The member from the public shall not be a licensed health-care professional or be employed by or benefit financially from the health-care industry. The terms of the members of the board shall be four years. The governor may remove any member of the board for misconduct, incompetency, or neglect of duty. Members of the board shall remain in office until their successors are appointed.

(2) The board shall elect biennially from its membership a president and a vice-president. A majority of the board shall constitute a quorum for the transaction of all business.

(3) Members of the board shall be immune from suit in any action, civil or criminal, based upon any disciplinary proceedings or other official acts performed in good faith as members of the board.

(4) This article 290 is repealed, effective September 1, 2026. Before the repeal, the functions of the board are scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1546, § 1, effective October 1; (4) amended, (SB 19-153), ch. 369, p. 3379, § 10, effective October 1.

Editor's note: (1) This section is similar to former § 12-32-103 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-153. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-153, chapter 369, Session Laws of San Andreas 2019.

12-290-106. Powers and duties of board - limitation on authority - rules. (1) The board shall regulate the practice of podiatry and is a **type 1** entity, as defined in section 24-1-105. The board exercises, subject to this article 290, the following powers, duties, and functions:

(a) Adopt and from time to time revise rules pursuant to section 12-20-204, including rules governing advertising by licensees to prevent the use of misleading, deceptive, or false advertising;

(b) Examine, license, and renew licenses of duly qualified podiatric applicants;

(c) Make investigations, hold hearings, including hearings upon complaints concerning disciplining podiatrists, and take evidence in accordance with section 12-20-403 in all matters relating to the exercise and performance of the powers and duties vested in the board;

(d) Cause the prosecution of and seek injunctions in accordance with section 12-20-406 against all persons violating this article 290; and

(e) Approve or refuse to approve podiatric colleges.

(2) The authority granted the board under the provisions of this article 290 shall not be construed to authorize the board to arbitrate or adjudicate fee disputes between licensees or between a licensee and any other party.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1547, § 1, effective October 1. **L. 2022:** IP(1) amended, (SB 22-162), ch. 469, p. 3398, § 137, effective August 10.

Editor's note: Subsection (1) is similar to former § 12-32-104 (1); and subsection (2) is similar to former § 12-32-104.5, as those sections existed prior to 2019.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of San Andreas 2022.

12-290-107. Examination as to qualifications - rules. (1) Every person desiring to practice podiatry in this state shall be examined as to the person's qualifications, except as otherwise provided in this article 290. Each applicant shall submit, in a manner approved by the board, an application containing satisfactory proof that the applicant:

(a) Is at least twenty-one years of age;

(b) Is a graduate of a school of podiatry at which not less than a two-year prepodiatry course and a four-year course of podiatry is required and that is recognized and approved by the board;

(c) Has completed one year of a residency program approved by the board as established by rules promulgated by the board;

(c.5) Has passed an examination approved by the board as established by rules promulgated by the board; and

(d) In the two years immediately preceding the date the application is received by the board, has been enrolled in podiatric medical school or in a residency program, has passed the national examination, has been engaged in the active practice of podiatry as defined by the board, or can otherwise demonstrate competency as determined by the board.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1547, § 1, effective October 1; (1)(c) amended and (1)(c.5) added, (SB 19-153), ch. 369, p. 3379, § 11, effective October 1.

Editor's note: (1) This section is similar to former § 12-32-105 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-153. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-153, chapter 369, Session Laws of San Andreas 2019.

12-290-108. Issuance, revocation, or suspension of license - probation - unprofessional conduct - definitions - immunity in professional review. (1) (a) If the board determines that an applicant possesses the qualifications required by this article 290, has paid a fee to be determined and collected pursuant to section 12-20-105, and is entitled to a license to practice podiatry, the board shall issue the license.

(b) If the board determines that an applicant for a license to practice podiatry does not possess the qualifications required by this article 290 or that the applicant has done any of the acts defined in subsection (3) of this section as unprofessional conduct, the board may refrain from issuing a license, and the applicant may proceed as provided in section 24-4-104 (9).

(2) The board may take disciplinary or other action as authorized in section 12-20-404 against a licensee who is guilty of any unprofessional conduct.

(3) "Unprofessional conduct" as used in this article 290 means:

(a) Resorting to fraud, misrepresentation, or material deception, or making a misleading omission, in applying for, securing, renewing, or seeking reinstatement of a license to practice podiatry in this state or any other state, in applying for professional liability coverage required pursuant to section 12-290-118 or for privileges at a hospital or other health-care facility, or in taking the examination required in this article 290;

(b) Conviction of a felony or any crime that would constitute a violation of this article 290. For purposes of this subsection (3)(b), "conviction" includes the entry of a plea of guilty or nolo contendere or the imposition of a deferred sentence.

(c) Habitual or excessive use or abuse of alcohol or controlled substances;

(d) Aiding or abetting in the practice of podiatry any person not licensed to practice podiatry or any person whose license to practice podiatry is suspended;

(e) Any act or omission that fails to meet generally accepted standards of the practice of podiatry;

(f) (I) Except as otherwise provided in section 25-3-103.7, practicing podiatry as:

(A) The partner, agent, or employee of, or in joint venture with, any person who does not hold a license to practice podiatry within this state;

(B) An employee of, or in joint venture with, any partnership or association any of whose partners or associates do not hold a license to practice podiatry within this state; or

(C) An employee of, or in joint venture with, any corporation other than a professional service corporation for the practice of podiatry as provided for in sections 12-290-116 (5) and 12-290-118.

(II) Any licensee holding a license to practice podiatry in this state may accept employment from any person, partnership, association, or corporation to examine and treat the employees of the person, partnership, association, or corporation.

(g) Violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this article 290, an applicable provision of article 20 or 30 of this title 12, any rule promulgated by the board pursuant to this article 290, or any final agency order;

(h) Administering, dispensing, or prescribing any habit-forming drug or any controlled substance, as defined in section 18-18-102 (5), other than in the course of legitimate professional practice, which includes only prescriptions related to the scope of podiatric medicine;

(i) Conviction of violation of any federal or state law regulating the possession, distribution, or use of any controlled substance, as defined in section 18-18-102 (5). For the purposes of this subsection (3)(i), a plea of guilty or a plea of nolo contendere accepted by the court shall be considered as a conviction.

(j) Failing to:

(I) Notify the board of a physical illness, physical condition, or behavioral or mental health disorder that affects the podiatrist's ability to practice podiatric medicine with reasonable skill and safety to patients;

(II) Act within the limitations created by a physical illness, physical condition, or behavioral or mental health disorder that renders the podiatrist unable to practice podiatric medicine with reasonable skill and safety to patients; or

(III) Comply with the limitations agreed to under a confidential agreement entered pursuant to section 12-290-123.

(k) Advertising that is misleading, deceptive, or false;

(l) (I) Violation or abuse of health insurance pursuant to section 18-13-119; or

(II) Advertising through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that the licensee will perform any act prohibited by section 18-13-119 (3);

(m) Engaging in a sexual act with a patient during the course of patient care or during the six-month period immediately following the termination of such care. "Sexual act", as used in this subsection (3)(m), means sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401.

(n) Performing any procedure in the course of patient care beyond the podiatrist's training and competence. This subsection (3)(n) shall not be construed to authorize a licensed podiatrist to act beyond the scope of the practice of podiatry.

(o) Engaging in any of the following activities and practices: Willful and repeated ordering or performance, without clinical justification, of demonstrably unnecessary laboratory tests or studies; the administration, without clinical justification, of treatment that is demonstrably unnecessary; the failure to obtain consultations or perform referrals when failing to do so is not consistent with the standard of care for the profession; or ordering or performing, without clinical justification, any service, X ray, or treatment that is contrary to recognized standards of the practice of podiatry as interpreted by the board;

(p) Falsifying or repeatedly making incorrect essential entries or repeatedly failing to make essential entries on patient records;

(q) Committing a fraudulent insurance act, as defined in section 10-1-128;

(r) Refusing to complete and submit the renewal questionnaire, or failing to report all of the relevant facts, or falsifying any information on the questionnaire as required pursuant to section 12-290-119;

(s) Failing to report to the board any podiatrist known to have violated or, upon information or belief, believed to have violated any of the provisions of this subsection (3);

(t) Dividing fees or compensation or billing for services performed by an unlicensed person as prohibited by section 12-290-122;

(u) Failing to report to the board within thirty days any adverse action taken against the licensee by another licensing agency in another state, territory, or country or any peer review body, health-care institution, professional or medical society or association, governmental agency, law enforcement agency, or court for acts of conduct that would constitute grounds for action as described in this article 290;

(v) Failing to report to the board the surrender of a license or other authorization to practice medicine in another state or jurisdiction or the surrender of membership on any medical staff or in any medical or professional association or society while under investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this article 290;

(w) Violating the provisions of section 8-42-101 (3.6);

(x) Any violation of the provisions of section 12-290-202 or any rule of the board adopted pursuant to that section;

(y) Failing to respond in an honest, materially responsive, and timely manner to a complaint issued pursuant to section 12-290-113.

(4) The discipline of a licensee for acts related to the practice of podiatry in another state, territory, or country shall be deemed unprofessional conduct. For purposes of this subsection (4), "discipline" includes any sanction required to be reported pursuant to 45 CFR 60.8. This subsection (4) shall apply only to disciplinary action based upon acts or omissions in the other state, territory, or country substantially as defined as unprofessional conduct pursuant to subsection (3) of this section.

(5) (a) If a professional review committee is established pursuant to this section to investigate the quality of care being given by a person licensed pursuant to this article 290, it shall include in its membership at least three persons licensed under this article 290, but the committee may be authorized to act only by:

(I) The board; or

(II) A society or an association of persons licensed pursuant to this article 290 whose membership includes not less than one-third of the persons licensed pursuant to this article 290 residing in this state if the licensee whose services are the subject of review is a member of the society or association.

(b) In addition to the persons specified in section 12-20-402, any member of the professional review committee, any member of the professional review committee's staff, any person acting as a witness or consultant to the committee, any witness testifying in a proceeding authorized under this article 290, and any person who lodges a complaint pursuant to this article 290 is granted the same immunity, and is subject to the same conditions for immunity, as specified in section 12-20-402.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1548, § 1, effective October 1; (3)(j) amended, (SB 19-153), ch. 369, p. 3380, § 12, effective October 1.

Editor's note: (1) This section is similar to former § 12-32-107 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-153. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1,

2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-153, chapter 369, Session Laws of San Andreas 2019.

Cross references: For an exception to the provisions of subsection (3)(f), see § 6-18-303.

12-290-109. Volunteer podiatrist license. (1) Any person licensed to practice podiatry pursuant to this article 290 may apply to the board for volunteer licensure status. The application shall be in the form and manner designated by the board. The board may grant volunteer licensure status by issuing a volunteer license, or the board may deny the application if the licensee has been disciplined for any of the causes set forth in section 12-290-108.

(2) Any person applying for a license under this section shall:

(a) Attest that, after a date certain, the applicant no longer earns income as a podiatrist;

(b) Pay the license fee authorized by section 12-20-105. The volunteer podiatrist license fee shall be reduced from the license fee.

(c) Maintain liability insurance as provided in section 12-290-104.

(3) The volunteer status of a licensee shall be plainly indicated on the face of any volunteer license issued pursuant to this section.

(4) The board is authorized to conduct disciplinary proceedings pursuant to section 12-290-113 against any person licensed under this section for an act committed while the person was licensed pursuant to this section.

(5) Any person licensed under this section may apply to the board for a return to active licensure status by filing an application in the form and manner designated by the board. The board may approve the application and issue a license to practice podiatry or may deny the application if the licensee has been disciplined for or engaged in any of the activities set forth in section 12-290-108.

(6) A podiatrist with a volunteer license shall only provide podiatry services if the services are performed on a limited basis for no fee or other compensation.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1552, § 1, effective October 1.

Editor's note: This section is similar to former § 12-32-107.2 as it existed prior to 2019.

12-290-110. Podiatry training license. (1) The board shall issue a podiatry training license to an applicant who has:

(a) Graduated from a podiatric medical school approved by the board;

(b) Passed the part I and part II examinations by the National Board of Podiatric Medical Examiners or its successor organization; and

(c) Been accepted into a podiatric residency program in San Andreas.

(2) At least thirty days prior to the date the applicant begins the residency program, the applicant shall submit a statement to the board from the residency director of an approved residency program in San Andreas that states the applicant meets the necessary qualifications and that the residency program accepts responsibility for the applicant's training while in the program.

(3) Where feasible, the applicant shall submit a completed application, on a form approved by the board, on or before the date on which the applicant begins the approved residency. A podiatry training license granted pursuant to this section shall expire if a completed application is not received by the board within sixty days after the applicant begins the approved residency.

(4) The board may refuse to issue a podiatric training license to an applicant who does not have the necessary qualifications, who has engaged in unprofessional conduct pursuant to section 12-290-108, or who has been disciplined by a licensing board in another jurisdiction.

(5) A person with a podiatric training license shall practice podiatry only under the supervision of a licensed podiatrist or a physician licensed to practice medicine within the residency program. A person with a podiatry training license shall not delegate podiatric or medical services to a person who is not licensed to practice podiatry or medicine and shall not have the authority to collaborate with physician assistants.

(6) The podiatry training license shall not be renewed and shall expire:

(a) No later than three years after the date the license is issued;

(b) If the training licensee is no longer participating in the residency program; or

(c) When the training licensee receives a license to practice podiatry pursuant to section 12-290-108.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1553, § 1, effective October 1. **L. 2023:** (5) amended, (SB 23-083), ch. 114, p. 414, § 8, effective August 7.

Editor's note: This section is similar to former § 12-32-107.4 as it existed prior to 2019.

12-290-111. Prescriptions - requirement to advise patients - limits on prescriptions. (1) A podiatrist licensed under this article 290 may advise the podiatrist's patients of their option to have the symptom or purpose for which a prescription is being issued included on the prescription order.

(2) A podiatrist's failure to advise a patient under subsection (1) of this section shall not be grounds for any disciplinary action against the podiatrist's professional license issued under this article 290. Failure to advise a patient pursuant to subsection (1) of this section shall not be grounds for any civil action against a podiatrist in a negligence or tort action, nor shall the failure be evidence in any civil action against a podiatrist.

(3) A podiatrist is subject to the limitations on prescriptions specified in section 12-30-109.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1553, § 1, effective October 1. **L. 2021:** (3) amended, (HB 21-1276), ch. 364, p. 2400, § 13, effective July 1.

Editor's note: (1) This section is similar to former § 12-32-107.5 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-079. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1,

2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see SB 19-079, chapter 86, Session Laws of San Andreas 2019.

Cross references: For the legislative declaration in HB 21-1276, see section 1 of chapter 364, Session Laws of San Andreas 2021.

12-290-112. Licensure by endorsement. The board may issue a license by endorsement to engage in the practice of podiatry in this state to any applicant who satisfies the requirements of the occupational credential portability program.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1554, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1326), ch. 126, p. 546, § 42, effective June 25.

Editor's note: This section is similar to former § 12-32-108 as it existed prior to 2019.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-290-113. Disciplinary action by board. (1) In the discharge of its duties, the board may enlist the assistance of other persons licensed to practice podiatry or medicine in this state. Podiatrists have the duty to report to the board any podiatrist known, or upon information and belief, to have violated any of the provisions of section 12-290-108 (3).

(2) (a) Complaints in writing relating to the conduct of any podiatrist licensed or authorized to practice podiatry in this state may be made by any person or may be initiated by the board on its own motion. The podiatrist complained of shall be given notice by first-class mail of the nature of all matters complained of within thirty days of the receipt of the complaint or initiation of the complaint by the board and shall be given thirty days to make explanation or answer thereto.

(b) The board shall cause an investigation to be made when the board is informed of:

(I) Disciplinary actions taken by hospitals to suspend or revoke the privileges of a podiatrist and reported to the board pursuant to section 25-3-107;

(II) Disciplinary actions taken by a professional review committee established pursuant to section 12-290-108 (5) against a podiatrist;

(III) An instance of a malpractice settlement or judgment against a podiatrist reported to the board pursuant to section 10-1-124; or

(IV) Podiatrists who have been allowed to resign from hospitals for unprofessional conduct. The hospitals shall report those resignations to the board.

(c) On completion of an investigation, the board shall make a finding that:

(I) The complaint is without merit and no further action need be taken with reference thereto;

(II) There is no reasonable cause to warrant further action with reference thereto;

(III) The complaint or investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be

dismissed as being without merit, in which case the board may issue a letter of admonition to the licensee in accordance with section 12-20-404 (4);

(IV) The investigation discloses facts that warrant further proceedings by formal complaint, as provided in subsection (3) of this section, in which event the complaint shall be referred to the attorney general for preparation and filing of a formal complaint; or

(V) The investigation discloses an instance of conduct that, in the opinion of the board, does not warrant formal action but in which the board has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected, in which case the board shall send a confidential letter of concern in accordance with section 12-20-404 (5) to the podiatrist against whom a complaint was made. If the board learns of second or subsequent actions of the same or similar nature by the licensee, the board shall not issue a confidential letter of concern but shall take such other course of action as it deems appropriate.

(3) (a) All formal complaints seeking disciplinary action against a podiatrist shall be filed with the board. A formal complaint shall set forth the charges with sufficient particularity as to inform the podiatrist clearly and specifically of the acts of unprofessional conduct with which the podiatrist is charged.

(b) The board may include in any disciplinary order placing a podiatrist on probation the conditions the board may deem appropriate to assure that the podiatrist is physically, mentally, and otherwise qualified to practice podiatry in accordance with generally accepted professional standards of practice, including any or all of the following:

(I) Submission by the podiatrist to examinations the board may order to determine the podiatrist's physical or mental condition or the podiatrist's professional qualifications;

(II) Taking therapy or courses of training or education as may be needed to correct deficiencies found either in the hearing or by the examinations;

(III) Review or supervision of the podiatrist's practice as may be necessary to determine the quality of the podiatrist's practice and to correct deficiencies therein; and

(IV) The imposition of restrictions upon the nature of the podiatrist's practice to assure that the podiatrist does not practice beyond the limits of the podiatrist's capabilities.

(c) Upon the failure of a licensee to comply with any conditions imposed by the board pursuant to subsection (3)(b) of this section, unless compliance is beyond the control of the licensee, the board may suspend the license of the licensee until the licensee complies with the conditions of the board.

(4) The board, through the department, may employ administrative law judges, on a full-time or part-time basis, to conduct hearings as provided by this article 290 or on any matter within the board's jurisdiction upon the conditions and terms the board may determine.

(5) Disciplinary proceedings and hearings shall be conducted in the manner prescribed by section 12-20-403 and article 4 of title 24, and the hearing and opportunity for review shall be conducted pursuant to those laws by the board or an administrative law judge at the board's discretion.

(6) (a) A person providing copies of records subpoenaed pursuant to section 12-20-403 (2) shall prepare the copies from the original record and shall delete from the copy provided pursuant to the subpoena the name of the patient, but shall identify the patient by a numbered code, to be retained by the custodian of the records from which the copies were made.

(b) Upon certification of the custodian that the copies are true and complete except for the patient's name, the copies shall be deemed authentic, subject to the right to inspect the

originals for the limited purpose of ascertaining the accuracy of the copies. No privilege of confidentiality shall exist with respect to the copies, and no liability shall lie against the board or the custodian or the custodian's authorized employee for furnishing or using the copies in accordance with this subsection (6).

(7) Upon the expiration of the term of suspension, the license shall be reinstated by the board if the holder of the license furnishes the board with evidence that the holder has complied with all terms of the suspension. If the evidence shows the holder has not complied with all terms of the suspension, the board shall continue the suspension or revoke the license at a hearing, notice of which and the procedure at which shall be as provided in this section.

(8) If a person holding a license to practice podiatry in this state is determined to be mentally incompetent or insane by a court of competent jurisdiction and a court enters, pursuant to part 3 or 4 of article 14 of title 15 or section 27-65-110 (4) or 27-65-127, an order specifically finding that the mental incompetency or insanity is of such a degree that the person holding a license is incapable of continuing to practice podiatry, the board shall automatically suspend the license, and, anything in this article 290 to the contrary notwithstanding, the suspension must continue until the licensee is found by the court to be competent to practice podiatry.

(9) (a) If the board has reasonable cause to believe that a person licensed to practice podiatry in this state is unable to practice podiatry with reasonable skill and safety to patients because of a condition described in section 12-290-108 (3)(c) or (3)(j), the board may require the licensee to submit to mental or physical examinations by physicians designated by the board. Upon the failure of the licensee to submit to the mental or physical examinations, unless due to circumstances beyond his or her control, the board may suspend the licensee's license to practice podiatry in this state until such time as he or she submits to the required examinations and the board has made a determination on the ability of the licensee based on the results of the examinations. The board shall ensure that all examinations are conducted and evaluated in a timely manner.

(b) Every person licensed to practice podiatry in this state shall be deemed, by so practicing or by applying for registration of his or her license to practice podiatry in this state, to have given consent to submit to mental or physical examinations when directed in writing by the board and, further, to have waived all objections to the admissibility of the examining physician's testimony or examination reports on the ground of privileged communication.

(c) The results of any mental or physical examination ordered by the board shall not be used as evidence in any proceeding other than before the board.

(10) Investigations and examinations of the board conducted pursuant to the provisions of this section shall be exempt from the provisions of any law requiring that proceedings of the board be conducted publicly or that the minutes or records of the board with respect to action of the board taken pursuant to the provisions of this subsection (10) be open to public inspection. Any proceedings with regard to a licensee who is in violation of section 12-290-108 (3)(c) and who is participating in good faith in a rehabilitation program designed to alleviate the conditions specified in section 12-290-108 (3)(c) that has been approved by the board are also exempt from any such requirements of law.

(11) A person licensed to practice podiatry or medicine who, at the request of the board, examines another person licensed to practice podiatry shall be immune from suit for damages by the person examined if the examining person conducted the examination and made findings or a diagnosis in good faith.

(12) The board may issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405.

(13) The board may impose a fine, not to exceed five thousand dollars, for a violation of this article 290.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1555, § 1, effective October 1; (2)(c)(III) amended, (SB 19-153), ch. 369, p. 3380, § 13, effective October 1. **L. 2022:** (8) amended, (HB 22-1256), ch. 451, p. 3224, § 12, effective August 10.

Editor's note: (1) This section is similar to former § 12-32-108.3 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-153. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-153, chapter 369, Session Laws of San Andreas 2019.

12-290-114. Reconsideration and review of action of board. (1) The board, on its own motion or upon application in accordance with section 12-20-404 (3), at any time after the refusal to grant a license, the imposition of any discipline as provided in section 12-290-113, or the ordering of probation as provided in section 12-20-404 (1)(b), may reconsider its prior action and grant, reinstate, or restore the license or terminate probation or reduce the severity of its prior disciplinary action. The taking of any further action, or the holding of a hearing with respect thereto, shall rest in the sole discretion of the board.

(2) Upon the receipt of the application, it may be forwarded to the attorney general for investigation as may be deemed necessary. A copy of the application and the report of investigation shall be forwarded to the board, which shall consider the same and report its findings and conclusions. The proceedings shall be governed by the applicable provisions governing formal hearings in disciplinary proceedings. The attorney general may present evidence bearing upon the matters in issue, and the burden shall be upon the applicant seeking reinstatement to establish the averments in the application as specified in section 24-4-105 (7). No application for reinstatement or for modification of a prior order shall be accepted unless the applicant deposits with the board all amounts unpaid under any prior order of the board.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1561, § 1, effective October 1.

Editor's note: This section is similar to former § 12-32-108.5 as it existed prior to 2019.

12-290-115. Judicial review. Section 12-20-408 governs judicial review of all final actions and orders of the board that are subject to judicial review.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1561, § 1, effective October 1.

Editor's note: This section is similar to former § 12-32-108.7 as it existed prior to 2019.

12-290-116. Unauthorized practice - penalties - exclusions. (1) Any person who practices or offers or attempts to practice podiatry within this state without an active license issued under this article 290 is subject to penalties pursuant to section 12-20-407 (1)(a).

(2) Any person who presents as the person's own the diploma, license, certificate, or credentials of another, gives either false or forged evidence of any kind to the board, or any member thereof, in connection with an application for a license to practice podiatry, practices podiatry under a false or assumed name, or falsely impersonates another licensee of a like or different name commits a class 6 felony and shall be punished as provided in section 18-1.3-401.

(3) A person shall not advertise in any form or hold himself or herself out to the public as a podiatrist, or, in any sign or any advertisement, use the word "podiatrist", "foot specialist", "foot correctionist", "foot expert", "practipedist", "podologist", or any other terms or letters indicating or implying that the person is a podiatrist or that the person practices or holds himself or herself out as practicing podiatry or foot correction in any manner, without having, at the time of so doing, a valid, unsuspended, and unrevoked license as required by this article 290.

(4) No podiatrist shall willfully cause the public to believe that the podiatrist has qualifications extending beyond the limits of this article 290, and no podiatrist shall willfully sign the podiatrist's name using the prefix "Doctor" or "Dr." without following the podiatrist's name with "podiatrist", "Doctor of Podiatric Medicine", or "D.P.M." No podiatrist shall use the title "podiatric physician" unless the title is followed by the words "practice limited to treatment of the foot and ankle".

(5) The conduct of the practice of podiatry in a corporate capacity is hereby prohibited, but the prohibition shall not be construed to prevent the practice of podiatry by a professional service corporation whose stockholders are restricted solely to licensed podiatrists. A professional service corporation may exercise the powers and shall be subject to the limitations and requirements, insofar as applicable, as are provided in section 12-290-118, relating to professional service corporations for the practice of podiatry.

(6) The provisions of this article 290 shall not:

(a) Apply to any physician licensed to practice medicine or surgery, any regularly commissioned surgeon of the United States armed forces or United States public health service, or any licensed osteopath;

(b) Be construed to prohibit the recommending, advertising, fitting, adjusting, or sale of corrective shoes, arch supports, or similar mechanical appliances and foot remedies by retail dealers and manufacturers;

(c) Be construed to prohibit, or to require a license for, the rendering of services under the personal and responsible direction and supervision of a person licensed to practice podiatry, and this exemption shall not apply to persons otherwise qualified to practice podiatry but not licensed to practice in this state; or

(d) Be construed to prohibit, or to require a license for, the rendering of nursing services by registered or other nurses in the lawful discharge of their duties pursuant to part 1 of article 255 of this title 12.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1561, § 1, effective October 1. **L. 2020:** (6)(d) amended, (HB 20-1183), ch. 157, p. 699, § 48, effective July 1.

Editor's note: This section is similar to former § 12-32-109 as it existed prior to 2019.

12-290-117. Use of physician assistants - collaboration requirements - rules. (1) A physician assistant licensed pursuant to article 240 of this title 12 may perform acts that constitute the practice of podiatry to the extent and in the manner authorized by rules promulgated by the board. The acts shall be consistent with sound practices of podiatry. All prescriptions issued by a physician assistant must include the physician assistant's name, the name and address of the health facility, and, if the health facility is a multispecialty organization, the name and address of the specialty clinic within the health facility where the physician assistant is practicing. The dispensing of prescription medication by a physician assistant is subject to section 12-280-120 (6).

(2) Prior to practicing podiatry, a physician assistant must enter into a collaborative agreement with a licensed podiatrist.

(3) The provisions of sections 12-240-107 (6), 12-240-113, and 12-240-114.5 governing physician assistants under the "San Andreas Medical Practice Act" apply to physician assistants under this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1562, § 1, effective October 1. **L. 2023:** Entire section amended, (SB 23-083), ch. 114, p. 414, § 9, effective August 7.

Editor's note: This section is similar to former § 12-32-109.3 as it existed prior to 2019.

12-290-118. Professional service corporations, limited liability companies, and registered limited liability partnerships for the practice of podiatry - definitions. (1) Persons licensed to practice podiatry by the board may form professional service corporations for the practice of podiatry under the "San Andreas Business Corporation Act", articles 101 to 117 of title 7, if the corporations are organized and operated in accordance with the provisions of this section. The articles of incorporation of professional service corporations shall contain provisions complying with the following requirements:

(a) The name of the corporation shall contain the words "professional company" or "professional corporation" or abbreviations thereof.

(b) The corporation shall be organized solely for the purposes of conducting the practice of podiatry only through persons licensed by the board to practice podiatry in the state of San Andreas.

(c) The corporation may exercise the powers and privileges conferred upon corporations by the laws of San Andreas only in furtherance of and subject to its corporate purpose.

(d) All shareholders of the corporation shall be persons licensed by the board to practice podiatry in the state of San Andreas, and who at all times own their shares in their own right. They shall be individuals who, except for illness, accident, time spent in the armed services, on vacations, and on leaves of absence not to exceed one year, are actively engaged in the practice of podiatry in the offices of the corporation.

(e) Provisions shall be made requiring any shareholder who ceases to be or for any reason is ineligible to be a shareholder to dispose of all the shareholder's shares immediately,

either to the corporation or to any person having the qualifications described in subsection (1)(d) of this section.

(f) The president shall be a shareholder and a director and, to the extent possible, all other directors and officers shall be persons having the qualifications described in subsection (1)(d) of this section. Lay directors and officers shall not exercise any authority whatsoever over professional matters. Notwithstanding sections 7-108-103 to 7-108-106, relating to the terms of office of directors, a professional service corporation for the practice of podiatry may provide in the articles of incorporation or the bylaws that the directors may have terms of office of up to six years and that the directors may be divided into either two or three classes, each class to be as nearly equal in number as possible, with the terms of each class staggered to provide for the periodic, but not annual, election of less than all the directors.

(g) The articles of incorporation shall provide and all shareholders of the corporation shall agree that all shareholders of the corporation shall be jointly and severally liable for all acts, errors, and omissions of the employees of the corporation or that all shareholders of the corporation shall be jointly and severally liable for all acts, errors, and omissions of the employees of the corporation except during periods of time when each person licensed by the board to practice podiatry in San Andreas who is a shareholder or any employee of the corporation has a professional liability policy insuring the licensee and all employees who are not licensed to practice podiatry who act at the licensee's direction in the amount of fifty thousand dollars for each claim and an aggregate top limit of liability per year for all claims of one hundred fifty thousand dollars or the corporation maintains in good standing professional liability insurance, which shall meet the following minimum standards:

(I) The insurance shall insure the corporation against liability imposed upon the corporation by law for damages resulting from any claim made against the corporation arising out of the performance of professional services for others by those officers and employees of the corporation who are licensed by the board to practice podiatry.

(II) The policies shall insure the corporation against liability imposed upon it by law for damages arising out of the acts, errors, and omissions of all nonprofessional employees.

(III) The insurance shall be in an amount for each claim of at least fifty thousand dollars multiplied by the number of persons licensed to practice podiatry employed by the corporation. The policy may provide for an aggregate top limit of liability per year for all claims of one hundred fifty thousand dollars also multiplied by the number of persons licensed to practice podiatry employed by the corporation, but no firm shall be required to carry insurance in excess of three hundred thousand dollars for each claim with an aggregate top limit of liability for all claims during the year of nine hundred thousand dollars.

(IV) The policy may provide that it does not apply to: Any dishonest, fraudulent, criminal, or malicious act or omission of the insured corporation or any stockholder or employee thereof; the conduct of any business enterprise, as distinguished from the practice of podiatry, in which the insured corporation under this section is not permitted to engage but that nevertheless may be owned by the insured corporation or in which the insured corporation may be a partner or that may be controlled, operated, or managed by the insured corporation in its own or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith; when not resulting from breach of professional duty, bodily injury to, or sickness, disease, or death of any person, or to injury to or destruction of any tangible property, including

the loss of use thereof; and the policy may contain reasonable provisions with respect to policy periods, territory, claims, conditions, and other usual matters.

(2) (a) The corporation shall do nothing that, if done by a person licensed to practice podiatry in the state of San Andreas employed by it, would violate the standards of professional conduct as provided for in section 12-290-108 (3). Any violation by the corporation of this section shall be grounds for the board to terminate or suspend its right to practice podiatry.

(b) The provisions of subsection (5)(b) of this section shall apply to the employment of a podiatrist by a professional service corporation, limited liability company, or registered limited liability partnership formed for the practice of podiatry in accordance with this section regardless of the date of formation of the entity.

(3) Nothing in this section shall be deemed to diminish or change the obligation of each person licensed to practice podiatry employed by the corporation to conduct his or her practice in accordance with the standards of professional conduct provided for in section 12-290-108 (3). Any person licensed by the board to practice podiatry who by act or omission causes the corporation to act or fail to act in a way that violates the standards of professional conduct, including any provision of this section, shall be deemed personally responsible for the act or omission and shall be subject to discipline for the act or omission.

(4) A professional service corporation may adopt a pension, cash profit sharing, deferred profit sharing, health and accident, insurance, or welfare plan for all or part of its employees including lay employees if the plan does not require or result in the sharing of specific or identifiable fees with lay employees, and if any payments made to lay employees, or into any such plan in behalf of lay employees, are based upon their compensation or length of service, or both, rather than the amount of fees or income received.

(5) (a) Except as provided in this section, corporations shall not practice podiatry.

(b) Employment of a podiatrist by a certified or licensed hospital, licensed skilled nursing facility, certified home health agency, licensed hospice, certified comprehensive outpatient rehabilitation facility, certified rehabilitation agency, authorized health maintenance organization, accredited educational entity, or other entity wholly owned and operated by any governmental unit or agency shall not be considered the corporate practice of podiatry if:

(I) The relationship created by the employment does not affect the ability of the podiatrist to exercise his or her independent judgment in the practice of the profession;

(II) The podiatrist's independent judgment in the practice of the profession is in fact unaffected by the relationship;

(III) The policies of the entity employing the podiatrist contain a procedure by which complaints by a podiatrist alleging a violation of this subsection (5)(b) may be heard and resolved;

(IV) The podiatrist is not required to exclusively refer any patient to a particular provider or supplier; except that nothing in this subsection (5)(b)(IV) shall invalidate the policy provisions of a contract between a podiatrist and his or her intermediary or the managed care provisions of a health coverage plan; and

(V) The podiatrist is not required to take any other action he or she determines not to be in the patient's best interest.

(c) A podiatrist employed by an entity described in subsection (5)(b) of this section shall be an employee of the entity for purposes of liability for all acts, errors, and omissions of the employee.

(6) As used in this section, unless the context otherwise requires:

(a) "Articles of incorporation" includes operating agreements of limited liability companies and partnership agreements of registered limited liability partnerships.

(b) "Corporation" includes a limited liability company organized under the "San Andreas Limited Liability Company Act", article 80 of title 7, and a limited liability partnership registered under section 7-60-144 or 7-64-1002.

(c) "Director" and "officer" of a corporation includes a member and a manager of a limited liability company and a partner in a registered limited liability partnership.

(d) "Employees" includes employees, members, and managers of a limited liability company and employees and partners of a registered limited liability partnership.

(e) "Share" includes a member's rights in a limited liability company and a partner's rights in a registered limited liability partnership.

(f) "Shareholder" includes a member of a limited liability company and a partner in a registered limited liability partnership.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1563, § 1, effective October 1.

Editor's note: This section is similar to former § 12-32-109.5 as it existed prior to 2019.

12-290-119. Renewal of license - continuing education - professional development program - rules - renewal questionnaire. (1) (a) The board shall set reasonable continuing education requirements for the renewal of a license, but in no event shall the board require more than fourteen hours' credit of continuing education per year. A podiatrist desiring to renew his or her license to practice podiatry shall submit to the board the information the board believes necessary to show that the podiatrist has fulfilled the board's continuing education requirements and a fee to be determined and collected pursuant to section 12-20-105.

(b) The board shall promulgate rules and implement an ongoing professional development program that shall be developed in conjunction with statewide professional associations that represent podiatrists. The professional development program may include the continuing education requirements in subsection (1)(a) of this section.

(2) (a) The board shall establish a questionnaire to accompany the renewal form. The board shall design the questionnaire to determine if the licensee has acted in violation of, or has been disciplined for actions that might be construed as violations of, this article 290 or that may make the licensee unfit to practice podiatry with reasonable care and safety. The board shall include on the questionnaire a question regarding whether the licensee has complied with section 12-30-111 and is in compliance with section 12-280-403 (2)(a). The failure of an applicant to answer the questionnaire accurately constitutes unprofessional conduct pursuant to section 12-290-108.

(b) On and after July 1, 2024, as a condition of renewal of a license, each podiatrist shall attest that the podiatrist is in compliance with section 12-280-403 (2)(a) and that the podiatrist is aware of the penalties for noncompliance with that section.

(3) No license to practice podiatry that has been delinquent for more than two years shall be renewed unless the applicant demonstrates to the board the applicant's continued professional competence.

(4) Licenses issued pursuant to this article 290 are subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2). A person whose license has expired shall be subject to the penalties provided in this article 290 or in section 12-20-202 (1). The board shall establish the criteria for reinstatement of a license.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1567, § 1, effective October 1; (2) amended, (SB 19-079), ch. 86, p. 320, § 25, effective October 1. **L. 2022:** (2) amended, (HB 22-1115), ch. 397, p. 2826, § 7, effective August 10.

Editor's note: (1) This section is similar to former § 12-32-111 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-079. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from August 2, 2019, to October 1, 2019, see SB 19-079, chapter 86, Session Laws of San Andreas 2019.

12-290-120. Injunctive proceedings. The board may seek injunctive relief in accordance with section 12-20-406, but only to enjoin any person who does not possess a currently valid or active podiatry license from committing any act declared to be unlawful or prohibited by this article 290.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1567, § 1, effective October 1.

Editor's note: This section is similar to former § 12-32-113 as it existed prior to 2019.

12-290-121. Duplicates of license. The board is authorized to issue a duplicate license to any person to whom a license to practice podiatry in this state has been issued, upon application, properly verified by oath, establishing to the satisfaction of the board that the original license has been lost or destroyed and upon payment to the board of a fee to be determined by rule adopted by the board. No person shall be entitled to a duplicate license unless the person is a licensee in good standing.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1568, § 1, effective October 1.

Editor's note: This section is similar to former § 12-32-114 as it existed prior to 2019.

12-290-122. Division of fees prohibited - penalty - recovery of fees illegally paid. (1) A licensee commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501 if the licensee:

(a) Divides any fee or compensation received or charged for services rendered by the person as a licensee or agrees to divide the fee or compensation with any person, firm, association, or corporation as pay or compensation to the other person for:

(I) Sending or bringing any patient or other person to the licensee;

(II) Recommending the licensee to any person; or

(III) Being instrumental in any manner in causing any person to engage the licensee in the licensee's professional capacity;

(b) Either directly or indirectly pays or compensates or agrees to pay or compensate any person, firm, association, or corporation for:

(I) Sending or bringing any patient or other person to the licensee for examination or treatment;

(II) Recommending the licensee to any person; or

(III) Being instrumental in causing any person to engage the licensee in the licensee's professional capacity; or

(c) In the licensee's professional capacity and in the licensee's own name or behalf, makes or presents a bill or requests a payment for services rendered by any person other than the licensee.

(2) If a licensee, in violation of subsection (1) of this section, divides or agrees to divide any fee or compensation received by the licensee for services rendered in the licensee's professional capacity with any person, the person who has paid the fee or compensation to the licensee may recover the amount unlawfully paid or agreed to be paid from either the licensee or from the person to whom the fee or compensation has been paid, by an action to be instituted within two years after the date on which the fee or compensation was divided or agreed to be divided.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1568, § 1, effective October 1. **L. 2021:** IP(1) amended, (SB 21-271), ch. 462, p. 3157, § 152, effective March 1, 2022.

Editor's note: Subsection (1) is similar to former § 12-32-117 (1); and subsection (2) is similar to former § 12-32-118, as those sections existed prior to 2019.

12-290-123. Confidential agreements to limit practice - violation grounds for discipline. (1) Except as specified in subsection (2) of this section, section 12-30-108 concerning confidential agreements to limit practice applies to this article 290.

(2) This section and section 12-30-108 do not apply to a licensee subject to discipline under section 12-290-108 (3)(c).

Source: L. 2019: Entire section added, (SB 19-153), ch. 369, p. 3380, § 14, effective October 1.

Editor's note: This section is similar to § 12-32-120 as added in SB 19-153. That section was superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-153, chapter 369, Session Laws of San Andreas 2019.

12-290-124. Bone marrow aspirations from the tibia. (1) The board may permit a podiatrist to perform bone marrow aspirations from the tibia distal to the tibial tubercle if the podiatrist:

(a) Has successfully completed a podiatric surgery residency with the reconstruction rearfoot/ankle surgery certification; and

(b) Is in good standing with the board.

Source: L. 2019: Entire section added, (SB 19-153), ch. 369, p. 3379, § 8, effective October 1.

Editor's note: This section is similar to § 12-32-121 as added in SB 19-153. That section was superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-153, chapter 369, Session Laws of San Andreas 2019.

PART 2

SAFETY TRAINING FOR UNLICENSED X-RAY TECHNICIANS

Cross references: For similar provisions in article 215 of this title 12 regulating chiropractors, see part 2 of said article 215; for similar provisions in article 220 of this title 12 regulating dentists and dental hygienists, see part 6 of said article 220.

12-290-201. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that public exposure to the hazards of ionizing radiation used for diagnostic purposes should be minimized wherever possible. Accordingly, the general assembly finds, determines, and declares that for any podiatric physician or podiatrist to allow an untrained person to operate a machine source of ionizing radiation, including without limitation a device commonly known as an "X-ray machine", or to administer radiation to a patient for diagnostic purposes is a threat to the public health and safety.

(2) It is the intent of the general assembly that podiatric physicians or podiatrists utilizing unlicensed persons in their practices provide those persons with a minimum level of education and training before allowing them to operate machine sources of ionizing radiation; however, it is not the general assembly's intent to discourage education and training beyond this minimum. It is further the intent of the general assembly that established minimum training and education requirements correspond as closely as possible to the requirements of each particular work setting as determined by the board pursuant to this part 2.

(3) The general assembly seeks to ensure, and accordingly declares its intent, that in promulgating the rules authorized by this part 2, the board will make every effort, consistent with its other statutory duties, to avoid creating a shortage of qualified individuals to operate machine sources of ionizing radiation for beneficial medical purposes in any area of the state.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1569, § 1, effective October 1.

Editor's note: This section is similar to former § 12-32-201 as it existed prior to 2019.

12-290-202. Board authorized to issue rules. (1) (a) The board shall adopt rules prescribing minimum standards for the qualifications, education, and training of unlicensed persons operating machine sources of ionizing radiation and administering the radiation to patients for diagnostic podiatric use. Neither a podiatric physician nor a podiatrist shall allow any unlicensed person to operate a machine source of ionizing radiation or to administer radiation to any patient unless the person has met the standards then in effect under rules adopted pursuant to this section. The board may adopt rules allowing a grace period in which newly hired operators of machine sources of ionizing radiation shall receive the training required pursuant to this section.

(b) For purposes of this part 2, "unlicensed person" means any person who does not hold a current and active license entitling the person to practice podiatry under the provisions of this article 290.

(2) The board shall seek the assistance of licensed podiatrists in developing and formulating the rules promulgated pursuant to this section.

(3) The required number of hours of training and education for all unlicensed persons operating machine sources of ionizing radiation and administering radiation to patients shall apply to all persons in podiatric settings other than hospitals and similar facilities licensed by the department of public health and environment pursuant to section 25-1.5-103. The training and education may be obtained through programs approved by the appropriate authority of any state or through equivalent programs and training experience including on-the-job training as determined by the board.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1569, § 1, effective October 1.

Editor's note: This section is similar to former § 12-32-202 as it existed prior to 2019.

ARTICLE 295

Psychiatric Technicians

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 295 was numbered as article 42 of this title 12 prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

12-295-101. Legislative declaration. It is declared to be the policy of the state of San Andreas that, in order to safeguard life, health, property, and the public welfare of the people of the state of San Andreas, and in order to protect the people of the state of San Andreas against unauthorized, unqualified, and improper application of interpersonal psychiatric nursing relationships, it is necessary that a proper regulatory authority be established, and adequately provided for. Any person who practices as a psychiatric technician without qualifying for proper registration, and without submitting to the regulations provided in this article 295, endangers the public health thereby.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1570, § 1, effective October 1.

Editor's note: This section is similar to former § 12-42-101 as it existed prior to 2019.

12-295-102. Applicability of common provisions. Articles 1, 20, and 30 of this title 12 apply, according to their terms, to this article 295.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1570, § 1, effective October 1.

12-295-103. Definitions. As used in this article 295, unless the context otherwise requires:

(1) "Approved psychiatric technician education program" means a course of training conducted by a school for the training of psychiatric technicians carrying out the basic curriculum prescribed by this article 295 and approved by the board.

(2) "Board" means the state board of nursing created in section 12-255-105.

(3) "Person" includes an individual, firm, partnership, association, or corporation.

(4) "Practice as a psychiatric technician" means the performance for compensation of selected acts requiring interpersonal and technical skills and includes the administering of selected treatments and selected medications prescribed by a licensed physician or dentist, in the care of and in the observation and recognition of symptoms and reactions of a patient with a behavioral or mental health disorder or an intellectual and developmental disability under the direction of a licensed physician and the supervision of a registered professional nurse. The selected acts in the care of a patient with a behavioral or mental health disorder or an intellectual and developmental disability must not require the substantial specialized skill, judgment, and knowledge required in professional nursing.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1570, § 1, effective October 1; (1) amended, (SB 19-154), ch. 169, p. 1975, § 11, effective October 1.

Editor's note: (1) This section is similar to former § 12-42-102 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-154. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-154, chapter 169, Session Laws of San Andreas 2019.

12-295-104. State board of nursing - review of functions - repeal of article. (1) The licensing and regulation of psychiatric technicians shall be under the control of the board.

(2) This article 295 is repealed, effective September 1, 2034. Before the repeal, the licensure and regulation functions of the board are scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1571, § 1, effective October 1; (2) amended, (SB 19-154), ch. 169, p. 1975, § 12, effective October 1.

Editor's note: (1) This section is similar to former § 12-42-103 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-154. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-154, chapter 169, Session Laws of San Andreas 2019.

Cross references: For powers of the state board of nursing, see § 12-255-107.

12-295-105. Application for license. (1) Every applicant for license as a psychiatric technician must submit an application in a manner approved by the board.

(2) Every applicant shall accompany the application with a license fee established pursuant to section 12-20-105.

(3) Every person licensed under this article 295 shall be known as a licensed psychiatric technician and may place the letters "L.P.T." after his or her name. The term or the abbreviation shall not be used to identify anyone not licensed under this article 295. The terms "psychiatric technician", "psychiatric aide", "trained psychiatric technician", or "graduate psychiatric technician" shall for the purposes of this article 295 be deemed synonymous with the term "psychiatric technician", and none of the terms shall be used to identify anyone not licensed under this article 295.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1571, § 1, effective October 1; (1) and (2) amended, (SB 19-154), ch. 169, p. 1976, § 13, effective October 1.

Editor's note: (1) This section is similar to former § 12-42-104 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-154. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-154, chapter 169, Session Laws of San Andreas 2019.

12-295-106. License by examination. (1) Every applicant for license by examination shall submit written evidence, verified by oath, and satisfactory to the board that the applicant:

(a) Has not committed an act that would be grounds for disciplinary action against a licensee under this article 295;

(b) Has completed a four-year high school course or the equivalent thereof; and

(c) Has completed and received a diploma from the required approved psychiatric technician education program.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1571, § 1, effective October 1; (1)(c) amended, (SB 19-154), ch. 169, p. 1976, § 14, effective October 1.

Editor's note: (1) This section is similar to former § 12-42-105 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-154. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-154, chapter 169, Session Laws of San Andreas 2019.

12-295-107. Examinations - issuance of license after examination. (1) All applicants, unless licensed by endorsement, shall be required to pass a written examination.

(2) Examinations shall be held within the state, at least once a year, at such times and places as the board shall determine.

(3) The board shall issue a license to each applicant who passes the examination and who is not otherwise disqualified to receive a license under the provisions of this article 295.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1571, § 1, effective October 1.

Editor's note: Subsection (1) is similar to former § 12-42-106 (1); subsection (2) is similar to former § 12-42-106 (2); and subsection (3) is similar to former § 12-42-107, as those sections existed prior to 2019.

12-295-108. License by endorsement. The board may issue a license to an applicant who satisfies the requirements of the occupational credential portability program.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1572, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1326), ch. 126, p. 547, § 43, effective June 25.

Editor's note: This section is similar to former § 12-42-109 as it existed prior to 2019.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-295-109. Approved psychiatric technician education program. (1) (a) Any institution within the state of San Andreas desiring to conduct an approved preservice psychiatric technician education program may apply to the board and submit evidence that it is prepared to carry out a psychiatric technician curriculum that contains theoretical content and clinical practice to prepare the psychiatric technician student to care for clients with intellectual and developmental disabilities or behavioral or mental health disorders in institutional and community settings.

(b) Content in a psychiatric technician education program must include but is not limited to:

(I) Fundamental nursing principles and skills;

(II) Growth and developmental and other physical and behavioral skills;

(III) Intellectual and developmental disabilities theory and rehabilitation nursing principles and skills if the technician is to be licensed to care for clients with intellectual and developmental disabilities; and

(IV) Psychopathology and psychiatric nursing principles and skills if the technician is to be licensed to care for clients with behavioral or mental health disorders.

(2) A survey of the institution and its entire psychiatric technician education program shall be made by the executive secretary or other authorized board employee. The survey may be conducted in conjunction with an authorized consultant appointed by the board. The persons making the survey shall submit a written report of the survey to the board. One or more board members may participate in any survey.

(3) If the requirements of this article 295 for an approved psychiatric technician education program are met, the board must approve the institution as a psychiatric technician educational program for psychiatric technicians for work with patients with mental health disorders or intellectual and developmental disabilities, and the approval is valid for so long as the institution meets the requirements of this article 295.

(4) The board shall examine, from time to time, the approved psychiatric technician education programs of all institutions in the state with approved programs. The executive secretary or other authorized representative of the board shall conduct the examinations and submit the examination results to the board in the form of written reports. If the board determines that an institution with an approved psychiatric technician education program is not maintaining the standards required by this article 295, the board shall serve notice of its determination in writing, specifying the defect, on the institution by certified mail, postage prepaid, return receipt requested. If the institution receiving the notice fails, within one year after mailing of the notice, to correct the conditions complained of in the notice, the board shall revoke the institution's authority to conduct an approved psychiatric technician education program. An institution has the right, at any time before the expiration of one year from the date it receives the notice, to demand and be granted a hearing before the board. In case of a demand, the board shall not take action until after the hearing.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1572, § 1, effective October 1; (1)(a), (3), and (4) amended, (SB 19-154), ch. 169, p. 1976, § 15, effective October 1.

Editor's note: (1) This section is similar to former § 12-42-111 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-154. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-154, chapter 169, Session Laws of San Andreas 2019.

12-295-110. Renewal of license. (1) A license issued pursuant to this article 295 is subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2). Any person whose license has expired shall be subject to the penalties provided in this article 295 or section 12-20-202 (1).

(2) A person who is not engaged as a psychiatric technician in the state shall not be required to pay a renewal fee for so long as the person does not so practice, but shall notify the board of the person's inactive status in writing. Prior to resumption of the practice as a psychiatric technician, the person shall be required to notify the board and remit a renewal fee for the current annual period. After a five-year period in an inactive status, the license may be renewed only by complying with the provisions in this article 295 relating to the issuance of an original license.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1573, § 1, effective October 1.

Editor's note: This section is similar to former § 12-42-112 as it existed prior to 2019.

12-295-111. Grounds for discipline. (1) "Grounds for discipline", as used in this article 295, means any action by any person who:

(a) Has procured or attempted to procure a license by fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact;

(b) (I) Has been convicted of a felony or any crime that would constitute a violation of this article 295.

(II) For purposes of this subsection (1)(b), "convicted" includes a plea of guilty or nolo contendere or imposing a sentence that is deferred prior to final sentencing or dismissal with prejudice.

(III) A certified copy of the judgment of a court of competent jurisdiction of the conviction or plea shall be prima facie evidence of the conviction.

(c) Has acted in a manner inconsistent with the health or safety of individuals under the person's care;

(d) Has had a license to practice as a psychiatric technician or any other health-care occupation suspended or revoked in any jurisdiction. A certified copy of the order of suspension or revocation shall be prima facie evidence of the suspension or revocation.

(e) Has violated or has aided or knowingly permitted any person to violate any provision of this article 295 or an applicable provision of article 20 or 30 of this title 12;

(f) Has practiced as a psychiatric technician in a manner that fails to meet generally accepted standards for the practice;

(g) Has violated any order or rule of the board pertaining to practice or licensure as a psychiatric technician;

(h) Has falsified or in a negligent manner made incorrect entries or failed to make essential entries on patient records;

(i) Habitually or excessively uses or abuses alcohol or controlled substances, as defined in section 18-18-102 (5), or other drugs having similar effects, or is diverting controlled substances, as defined in section 18-18-102 (5), or other drugs having similar effects from the licensee's place of employment; except that the board has the discretion not to discipline the licensee if the licensee is participating in good faith in an alcohol or substance use disorder treatment program approved by the board;

(j) (I) Has failed to notify the board of a physical illness, physical condition, or behavioral, mental health, or substance use disorder that affects the psychiatric technician's

ability to practice as a psychiatric technician with reasonable skill and safety to patients or that may endanger the health or safety of individuals under the person's care;

(II) Has failed to act within the limitations created by a physical illness, physical condition, or behavioral, mental health, or substance use disorder that renders the psychiatric technician unable to practice as a psychiatric technician with reasonable skill and safety to patients or that may endanger the health or safety of individuals under the person's care; or

(III) Has failed to comply with the limitations agreed to under a confidential agreement entered into pursuant to section 12-30-108;

(k) Has violated the confidentiality of information or knowledge as prescribed by law concerning any patient;

(l) Has engaged in any conduct that would constitute a crime as defined in title 18, and which conduct relates to the person's employment as a psychiatric technician;

(m) Willfully fails to respond in a materially factual and timely manner to a complaint issued pursuant to section 12-255-119 (3);

(n) Fraudulently obtains, sells, transfers, or furnishes any psychiatric technician diploma, license, renewal of license, or record, or aids or abets another in the activity;

(o) Advertises, represents, or holds himself or herself out in any manner as a psychiatric technician or practices as a psychiatric technician without having a license to practice as a psychiatric technician issued under this article 295;

(p) Uses in connection with his or her name any designation tending to imply that he or she is a licensed psychiatric technician without having a license issued under this article 295; or

(q) Practices as a psychiatric technician during the time his or her license is suspended or revoked.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1573, § 1, effective October 1; (1)(c), (1)(f), (1)(g), (1)(i), and (1)(j) amended, (SB 19-154), ch. 169, p. 1977, § 16, effective October 1.

Editor's note: (1) This section is similar to former § 12-42-113 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-154. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-154, chapter 169, Session Laws of San Andreas 2019.

12-295-112. Withholding or denial of license - hearing. (1) The board is empowered to determine summarily whether an applicant for a license to practice as a psychiatric technician possesses the qualifications required by this article 295 or whether there is probable cause to believe that an applicant has done any of the acts set forth in section 12-295-111 as grounds for discipline. As used in this section, "applicant" does not include a renewal applicant.

(2) If the board determines that an applicant does not possess the qualifications required by this article 295 or that probable cause exists to believe that an applicant has done any of the acts set forth in section 12-295-111, the board may withhold or deny the applicant a license. In such instance, the provisions of section 24-4-104 (9) shall apply, and the board shall provide the applicant with a statement in writing setting forth the basis of the board's determination that the

applicant does not possess the qualifications required by this article 295 or the factual basis for probable cause that the applicant has done any of the acts set forth in section 12-295-111.

(3) If the applicant requests a hearing pursuant to the provisions of section 24-4-104 (9) and fails to appear without good cause at the hearing, the board may affirm its prior action of withholding or denial without conducting a hearing.

(4) Following a hearing, the board shall affirm, modify, or reverse its prior action in accordance with its findings at the hearing.

(5) No action shall lie against the board for withholding or denying a license without a hearing in accordance with the provisions of this section if the board acted reasonably and in good faith.

(6) At the hearing, the applicant shall have the burden of proof to show that he or she possesses the qualifications required for licensure under this article 295. The board shall have the burden of proof to show commission of acts set forth in section 12-295-111.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1575, § 1, effective October 1.

Editor's note: This section is similar to former § 12-42-114 as it existed prior to 2019.

12-295-113. Disciplinary proceedings. Disciplinary proceedings under this article 295 shall be conducted pursuant to section 12-255-119.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1576, § 1, effective October 1.

Editor's note: This section is similar to former § 12-42-115.3 as it existed prior to 2019.

12-295-114. Immunity in professional review. (1) If a professional review committee is established pursuant to section 12-255-108 to investigate the quality of care being given by a person licensed pursuant to this article 295, it shall include in its membership at least three persons licensed in the same category as the licensee under review, but the committee may be authorized to act only by the board.

(2) In addition to the persons specified in section 12-20-402, any member of a professional review committee, any member of a committee's staff, any person acting as a witness or consultant to a committee, any witness testifying in a proceeding authorized under this article 295, and any person who lodges a complaint pursuant to this article 295 is granted the same immunity, and is subject to the same conditions for immunity, as specified in section 12-20-402.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1576, § 1, effective October 1.

Editor's note: This section is similar to former § 12-42-115.5 as it existed prior to 2019.

12-295-115. Surrender of license. (1) Prior to the initiation of an investigation or hearing, any licensee may surrender his or her license to practice as a psychiatric technician.

(2) Following the initiation of an investigation or hearing and upon a finding that to do so would be in the public interest, the board may allow a licensee to surrender his or her license to practice.

(3) The board shall not issue a license to a former licensee whose license has been surrendered unless the licensee meets all of the requirements of this article 295 for a new applicant, including passing an examination.

(4) The surrender of a license in accordance with this section removes all rights and privileges to practice as a psychiatric technician, including renewal of a license.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1576, § 1, effective October 1.

Editor's note: This section is similar to former § 12-42-115.7 as it existed prior to 2019.

12-295-116. Judicial review. Section 12-20-408 governs judicial review of all final actions and orders of the board that are subject to judicial review.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1576, § 1, effective October 1.

Editor's note: This section is similar to former § 12-42-115.9 as it existed prior to 2019.

12-295-117. Exclusions. (1) This article 295 does not affect or apply to the gratuitous care of a person with a behavioral or mental health disorder by friends or members of the family or to any person taking care of a person with a behavioral or mental health disorder for hire who does not represent himself or herself or hold himself or herself out to the public as a trained or licensed psychiatric technician; but a person for hire shall not hold himself or herself out as or perform the full duties of a psychiatric technician who is not a psychiatric technician licensed under the provisions of this article 295.

(2) This article 295 shall not be construed to prohibit:

(a) The practice as a psychiatric technician by students enrolled in an approved psychiatric technician education program or by graduates of an approved psychiatric technician education program pending the results of the first licensing examination scheduled by the board following their graduation;

(b) Practical nursing;

(c) Subsidiary workers in hospitals or similarly related institutions from assisting in the nursing care of patients where adequate medical and nursing supervision is provided;

(d) Subsidiary workers in the offices of persons licensed to practice medicine or dentistry in this state from assisting in the care of patients under the personal and responsible supervision and direction of those persons; or

(e) The practice of any legally qualified psychiatric technician of this state or another state who is employed by the United States government or any bureau, division, or agency thereof while in the discharge of his or her official duties.

(3) No provision of this article 295 shall be construed as applying to any sanitarium, nursing home, or rest home conducted in accordance with the practice of the tenets of any religious denomination in which persons of good faith rely solely upon spiritual means or prayer in the free exercise of religion to prevent or cure disease.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1577, § 1, effective October 1; (2)(a) amended, (SB 19-154), ch. 169, p. 1978, § 17, effective October 1.

Editor's note: (1) Subsection (1) is similar to former § 12-42-116 (1); subsections IP(2) and (2)(a) are similar to former § 12-42-116 (2); subsection (2)(b) is similar to former § 12-42-116 (3)(a); subsection (2)(c) is similar to former § 12-42-116 (3)(a); subsection (2)(d) is similar to former § 12-42-116 (3)(b); subsection (2)(e) is similar to former § 12-42-116 (3)(c); and subsection (3) is similar to former § 12-42-117, as those sections existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in SB 19-154. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-154, chapter 169, Session Laws of San Andreas 2019.

12-295-118. Unauthorized practice - penalties. (1) The practice as a psychiatric technician by any person who has not been issued a license under the provisions of this article 295, or whose license has been suspended or revoked, or has expired, is hereby declared to be inimical to the general public welfare and to constitute a public nuisance.

(2) Any person who practices or offers or attempts to practice as a psychiatric technician without an active license issued under this article 295 is subject to penalties pursuant to section 12-20-407 (1)(a).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1577, § 1, effective October 1.

Editor's note: Subsection (1) is similar to former § 12-42-118; and subsection (2) is similar to former § 12-42-119 (2), as those sections existed prior to 2019.

12-295-119. Professional nursing and the practice of a psychiatric technician - other groups. (1) Nothing in this article 295 shall be construed:

(a) As conferring any authority to practice medicine or professional nursing or to undertake the treatment or care of disease, pain, injury, deformity, or physical or mental condition in violation of the law of this state; or

(b) To enlarge or detract from the rights, powers, and duties of any other licensed business, occupation, or profession.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1578, § 1, effective October 1.

Editor's note: Subsections IP(1) and (1)(a) are similar to former § 12-42-120; and subsection (1)(b) is similar to former § 12-42-121, as those sections existed prior to 2019.

12-295-120. Confidential agreement to limit practice. (1) Except as specified in subsection (2) of this section, section 12-30-108 concerning confidential agreements to limit practice applies to this article 295.

(2) This section and section 12-30-108 do not apply to a psychiatric technician subject to discipline under section 12-295-111 (1)(i).

Source: L. 2019: Entire section added, (SB 19-154), ch. 169, p. 1978, § 18, effective October 1.

Editor's note: This section is similar to § 12-42-122 as added in SB 19-154. That section was superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For the former section in effect from July 1, 2019, to October 1, 2019, see SB 19-154, chapter 169, Session Laws of San Andreas 2019.

ARTICLE 300

Respiratory Therapists

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 300 was numbered as article 41.5 of this title 12 prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

12-300-101. Short title. The short title of this article 300 is the "Respiratory Therapy Practice Act".

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1578, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41.5-101 as it existed prior to 2019.

12-300-102. Legislative declaration. The general assembly hereby finds, determines, and declares that the practice of respiratory therapy in the state of San Andreas affects the public health, safety, and welfare of its citizens and must be subject to regulation and control to protect the public from the unqualified practice of respiratory therapy and from unprofessional conduct. The general assembly further recognizes the practice of respiratory therapy to be a dynamic and changing art and science that is continually evolving to include new ideas and ever more sophisticated techniques in patient care.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1578, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41.5-102 as it existed prior to 2019.

12-300-103. Applicability of common provisions. Articles 1, 20, and 30 of this title 12 apply, according to their terms, to this article 300.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1578, § 1, effective October 1.

12-300-104. Definitions. As used in this article 300, unless the context otherwise requires:

(1) "Medical director" means a licensed physician who holds such title in any inpatient or outpatient facility, department, or home care agency, and who is responsible for the quality, safety, and appropriateness of the respiratory therapy provided.

(2) "Respiratory therapist" means a person who is licensed to practice respiratory therapy pursuant to this article 300.

(3) "Respiratory therapy" means providing therapy, management, rehabilitation, support services for diagnostic evaluation, and care of patients with deficiencies and abnormalities that affect the pulmonary system under the overall direction of a medical director. Respiratory therapy includes the following:

(a) Direct and indirect pulmonary care services that are safe, aseptic, preventive, and restorative to the patient;

(b) The teaching or instruction of the techniques and skill of respiratory care whether or not in a formal educational setting;

(c) Direct and indirect respiratory care services, including the administration of pharmacological, diagnostic, and therapeutic agents related to respiratory care procedures necessary to implement a treatment, disease prevention, and pulmonary rehabilitative or diagnostic regimen prescribed by a physician, a physician assistant, an advanced practice registered nurse, or a certified midwife;

(d) Observation and monitoring of signs, symptoms, reactions, general behavior, and general physical response to respiratory care treatment and diagnostic testing for:

(I) The determination of whether such signs, symptoms, reactions, behavior, or general response exhibit abnormal characteristics; or

(II) The implementation based on observed abnormalities of appropriate reporting, referral, or respiratory care protocols or changes in treatment regimen pursuant to a prescription by a physician, a physician assistant, an advanced practice registered nurse, or a certified midwife or the initiation of emergency procedures;

(e) The diagnostic and therapeutic use of the following in accordance with the prescription of a physician, a physician assistant, an advanced practice registered nurse, or a certified midwife:

(I) Administration of medical gases, exclusive of general anesthesia;

(II) Aerosols;

(III) Humidification;

(IV) Environmental control systems and biomedical therapy;

(V) Pharmacologic agents related to respiratory care procedures;

(VI) Mechanical or physiological ventilatory support;

(VII) Bronchopulmonary hygiene;

(VIII) Respiratory protocol and evaluation;

(IX) Cardiopulmonary resuscitation;

(X) Maintenance of the natural airways;

(XI) Insertion and maintenance of artificial airways;

(XII) Diagnostic and testing techniques required for implementation of respiratory care protocols;

(XIII) Collection of specimens from the respiratory tract; or

(XIV) Analysis of blood gases and respiratory secretions and participation in cardiopulmonary research; and

(f) The transcription and implementation of the written and verbal orders of a physician pertaining to the practice of respiratory care.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1578, § 1, effective October 1. **L. 2023:** (3)(c), (3)(d)(II), and (3)(e) amended, (SB 23-167), ch. 261, p. 1546, § 51, effective May 25. **L. 2024:** (3)(c), (3)(d)(II), and (3)(e) amended, (HB 24-1253), ch. 179, p. 973, § 3, effective August 7.

Editor's note: This section is similar to former § 12-41.5-103 as it existed prior to 2019.

12-300-105. Use of titles restricted. A respiratory therapist, but no other person, may use the title "licensed respiratory therapist" or the letters "L.R.T."

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1579, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41.5-104 as it existed prior to 2019.

12-300-106. Limitations on authority. Nothing in this article 300 shall be construed as authorizing a respiratory therapist to perform the practice of medicine, surgery, or any other form of healing except as authorized by the provisions of this article 300.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1580, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41.5-105 as it existed prior to 2019.

12-300-107. License - effectiveness - fee. (1) An applicant for a license to practice respiratory therapy shall submit to the director evidence that he or she is credentialed by a national respiratory therapy credentialing body, as determined by the director, as a certified or registered respiratory therapist and shall pay a fee as determined by the director. The director shall maintain on file the standards of practice for examination and accreditation by the national respiratory therapy credentialing body determined by the director pursuant to this subsection (1) and make the standards available to the public.

(2) The director shall issue a license to practice respiratory therapy to an applicant who otherwise meets the qualifications set forth in this article 300 and who submits satisfactory proof and certifies under penalty of perjury that the applicant is either:

(a) Eligible for licensure by endorsement pursuant to the occupational credential portability program; or

(b) Holding credentials conferred by a national respiratory therapy credentialing body, as determined by the director, which credentials have not been suspended or revoked.

(c) (Deleted by amendment, L. 2024.)

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1580, § 1, effective October 1. **L. 2020:** (2)(a) amended, (HB 20-1326), ch. 126, p. 547, § 44, effective June 25. **L. 2024:** (2) amended, (HB 24-1253), ch. 179, p. 974, § 5, effective August 7.

Editor's note: This section is similar to former § 12-41.5-106 as it existed prior to 2019.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-300-108. Renewal of license. Licenses issued pursuant to this article 300 are subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2). Any person whose license has expired is subject to the penalties provided in this article 300 or section 12-20-202 (1).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1580, § 1, effective October 1. **L. 2024:** Entire section amended, (HB 24-1253), ch. 179, p. 974, § 6, effective August 7.

Editor's note: This section is similar to former § 12-41.5-107 as it existed prior to 2019.

12-300-109. Grounds for action - disciplinary proceedings. (1) The director may take disciplinary action against a licensee if the director finds that the person has represented himself or herself to be a licensed respiratory therapist after the expiration or suspension of his or her license.

(2) The director has the power to take disciplinary or other action as authorized in section 12-20-404 against a licensee in accordance with subsections (4), (5), (6), and (8) of this section upon proof that the person:

(a) Has procured or attempted to procure a license by fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact;

(b) (I) Has been convicted of or has entered and had accepted by a court a plea of guilty or nolo contendere to:

(A) A felony pursuant to section 18-1.3-401; or

(B) Any crime as defined in title 18 that relates to the person's employment as a respiratory therapist.

(II) A certified copy of the judgment of a court of competent jurisdiction of the conviction or plea shall be prima facie evidence of the conviction. In conjunction with any disciplinary proceeding pertaining to this subsection (2)(b), the director shall be governed by sections 12-20-202 (5) and 24-5-101.

(c) Has willfully or negligently acted in a manner inconsistent with the health or safety of persons under his or her care;

(d) Has had a license to practice respiratory therapy or any other health-care occupation suspended, revoked, or otherwise subjected to discipline in any jurisdiction. A certified copy of the order of suspension, revocation, or discipline shall be prima facie evidence of the suspension, revocation, or discipline.

(e) Has violated or has aided or knowingly permitted any person to violate this article 300 or an applicable provision of article 20 or 30 of this title 12;

(f) Practiced respiratory therapy in a manner that failed to meet generally accepted standards for respiratory therapists;

(g) Has negligently or willfully violated any order or rule of the director pertaining to the practice or licensure of respiratory therapy;

(h) Has a substance use disorder, as defined in section 27-81-102, or is an excessive or habitual user or abuser of alcohol or habit-forming drugs or is a habitual user of a controlled substance, as defined in section 18-18-102 (5), or other drugs having similar effects; except that the director has the discretion not to discipline the license holder if he or she is participating in good faith in an alcohol or substance use disorder treatment program approved by the director;

(i) (I) Has failed to notify the director, as required by section 12-30-108 (1), of a physical condition, physical illness, or behavioral, mental health, or substance use disorder that affects the licensee's ability to practice respiratory therapy with reasonable skill and safety or that may endanger the health or safety of persons under his or her care;

(II) Has failed to act within the limitations created by a physical condition, physical illness, or behavioral, mental health, or substance use disorder that renders the person unable to practice respiratory therapy with reasonable skill and safety or that might endanger the health or safety of persons under his or her care; or

(III) Has failed to comply with the limitations agreed to under a confidential agreement entered pursuant to sections 12-30-108 and 12-300-111;

(j) Has committed:

(I) A fraudulent insurance act as defined in section 10-1-128;

(II) An abuse of health insurance, as set forth in section 18-13-119, or advertised through any medium that he or she will perform an act prohibited by section 18-13-119 (3);

(k) Has engaged in any of the following activities or practices:

(I) Willful and repeated ordering and performance, without justification, of demonstrably unnecessary laboratory tests or studies;

(II) Administering treatment that is demonstrably unnecessary, without clinical justification;

(III) Failing to obtain consultations or perform referrals when failing to do so is inconsistent with the standard of care for the profession; or

(IV) Ordering or performing, without clinical justification, a service, procedure, or treatment that is contrary to recognized standards of the practice of respiratory therapy as interpreted by the director;

(l) Has practiced respiratory therapy without possessing a valid license issued by the director in accordance with this article 300 and any rules adopted under this article 300;

(m) Has used in connection with his or her name any designation that implies that he or she is a certified, registered, or licensed respiratory therapist, unless the person is licensed pursuant to this article 300;

(n) Has practiced respiratory therapy as a licensed respiratory therapist during the time that his or her license was suspended, revoked, or expired;

(o) Has sold, fraudulently obtained, or furnished a license to practice as a licensed respiratory therapist, or has aided or abetted the activity;

(p) Has failed to notify the director of the suspension, probation, or revocation of any of the person's past or currently held licenses, certificates, or registrations required to practice respiratory therapy in this or any other jurisdiction;

(q) Has knowingly employed any person who is not licensed in the practice of respiratory therapy in the capacity of a respiratory therapist;

(r) Has failed to respond in a timely manner to a complaint issued under this article 300; or

(s) Has refused to submit to a physical or mental examination when ordered by the director pursuant to section 12-300-110.

(3) The director shall revoke, suspend, deny, or refuse to renew a license, place a licensee on probation, or issue a cease-and-desist order or letter of admonition to a licensee in accordance with subsections (4), (5), (6), and (8) of this section upon proof that the person:

(a) Has falsified or repeatedly made incorrect essential entries or repeatedly failed to make essential entries on patient records;

(b) Has practiced outside of or beyond the person's area of training, experience, or competence.

(4) Except as otherwise provided in subsection (2) of this section, the director need not find that the actions that are grounds for discipline were willful but may consider whether the actions were willful when determining the nature of disciplinary sanctions to be imposed.

(5) A disciplinary proceeding may be commenced when the director has reasonable grounds to believe that a licensee has committed acts that may violate this section.

(6) Disciplinary proceedings shall be conducted pursuant to section 12-20-403 and article 4 of title 24.

(7) (a) The director may seek an injunction in accordance with section 12-20-406 to enjoin any person from committing any act prohibited by this article 300.

(b) In accordance with the provisions of article 4 of title 24, this article 300, and section 12-20-403, the director is authorized to investigate, hold hearings, and gather evidence in all matters related to the exercise and performance of the powers and duties of the director.

(8) If the director finds the charges proved and orders that discipline be imposed, the director may require, as a condition of reinstatement, that the licensee take such therapy or courses of training or education as may be needed to correct any deficiency found.

(9) A final action of the director may be judicially reviewed in accordance with section 12-20-408, and judicial proceedings for the enforcement of an order of the director may be instituted in accordance with section 24-4-106.

(10) An employer of a respiratory therapist shall report to the director any disciplinary action taken against the therapist or the resignation of the therapist in lieu of disciplinary action for conduct that violates this article 300.

(11) (a) Investigations, examinations, hearings, meetings, and other proceedings of the director conducted pursuant to this section shall be exempt from any law that requires:

(I) The proceedings to be conducted publicly; or

(II) The minutes or records of the director, with respect to action taken pursuant to this section, to be open to the public.

(b) Subsection (11)(a) of this section shall not apply after the director has made a decision to proceed with a disciplinary action and has served by first-class mail a notice of formal complaint on the licensee.

(12) The director may issue and send a letter of admonition to a licensee under the circumstances specified in and in accordance with section 12-20-404 (4).

(13) The director may send a confidential letter of concern to a licensee under the circumstances specified in section 12-20-404 (5).

(14) The director may issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1581, § 1, effective October 1. **L. 2020:** (2)(h) amended, (SB 20-007), ch. 286, p. 1413, § 39, effective July 13.

Editor's note: This section is similar to former § 12-41.5-109 as it existed prior to 2019.

12-300-110. Mental and physical examination of licensees. (1) (a) If the director has reasonable cause to believe that a licensee is unable to practice with reasonable skill and safety to clients, the director may order the licensee to submit to a mental or physical examination administered by a physician or other licensed health-care professional designated by the director.

(b) If a licensee refuses to submit to a mental or physical examination that has been properly ordered by the director pursuant to subsection (2) of this section, and the refusal is not due to circumstances beyond the licensee's control:

(I) The refusal constitutes grounds for discipline pursuant to section 12-300-109 (2)(s); and

(II) The director may suspend the licensee's license in accordance with section 12-300-109 until:

(A) The licensee submits to the examination and the results of the examination are known; and

(B) The director has made a determination of the licensee's fitness to practice.

(c) The director shall proceed with an order for examination and determination of a licensee's fitness to practice in a timely manner.

(2) In an order to a licensee pursuant to subsection (1) of this section to undergo a mental or physical examination, the director shall include the basis of the director's reasonable cause to believe that the licensee is unable to practice with reasonable skill and safety. For purposes of any disciplinary proceeding authorized under this article 300, the licensee is deemed to have waived all objections to the admissibility of the examining physician's testimony or examination reports on the ground that they are privileged communications.

(3) The licensee may submit to the director testimony or examination reports from a physician or other licensed health-care professional chosen by the licensee and pertaining to any

condition that the director has alleged might preclude the licensee from practicing with reasonable skill and safety. The director may consider the testimony or examination reports in conjunction with, but not in lieu of, testimony and examination reports of the physician or other licensed health-care professional designated by the director.

(4) The results of a mental or physical examination ordered by the director must not be used as evidence in any proceeding other than one before the director, are not public records, and must not be made available to the public.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1587, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41.5-109.5 as it existed prior to 2019.

12-300-111. Confidential agreement to limit practice. (1) Except as specified in subsection (2) of this section, section 12-30-108 concerning confidential agreements to limit practice applies to this article 300.

(2) This section and section 12-30-108 do not apply to a respiratory therapist subject to discipline for prohibited activities as described in section 12-300-109 (2)(h).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1588, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41.5-109.7 as it existed prior to 2019.

12-300-112. Exceptions. (1) This article 300 does not prohibit:

(a) (I) Any practice of respiratory therapy that is an integral part of a program of study by students enrolled in an accredited respiratory therapy program. Students enrolled in respiratory therapy education programs shall be identified as "student respiratory therapists" and shall only provide respiratory therapy under direct supervision of a respiratory therapist on the premises who is available for prompt consultation or treatment.

(II) The practice of respiratory therapy by pulmonary function technology students or polysomnographic technology students that is an integral part of a program of study that leads to certification or registration for their respective disciplines. Students enrolled in those programs shall be identified as "student pulmonary functions technologists" or "student polysomnographic technologists" and shall practice only under the direct supervision of a respiratory therapist or physician or under the supervision of an individual exempted from the provisions of this article 300 pursuant to subsection (1)(g) of this section.

(III) The practice of respiratory therapy by polysomnographic technologists who are not registered by or do not hold credentials from a nationally recognized organization, but those polysomnographic technologists shall only practice under the supervision of a respiratory therapist, a physician, or an individual exempted from this article 300 pursuant to subsection (1)(g) of this section, and those polysomnographic technologists' scope of practice must not

exceed oxygen titration with pulse oximetry and noninvasive positive pressure ventilation titration.

(b) Self-therapy by a patient or gratuitous therapy by a friend or family member who does not represent himself or herself to be a respiratory therapist;

(c) Any service provided during an emergency that may be included in the definition of the practice of respiratory therapy;

(d) Respiratory therapy services rendered in the course of assigned duties of persons serving in the military or persons working in federal facilities;

(e) Respiratory therapy services rendered in the course of assigned duties of persons delivering oxygen supplies, including the inspection and maintenance of associated apparatus by a person who does not represent himself or herself as a respiratory therapist;

(f) Any person registered, certified, or licensed in this state under this title 12 from engaging in the practice for which the person is registered, certified, or licensed;

(g) The practice of procedures that fall within the definition of respiratory therapy by certified pulmonary function technologists, registered pulmonary function technologists, registered polysomnographic technologists, or others who hold credentials from a nationally recognized organization as determined by the director; except that the scope of practice of a registered polysomnographic technologist must not exceed oxygen titration with pulse oximetry and noninvasive positive pressure ventilation titration;

(h) The instruction or training of persons to administer emergency oxygen during an aquatic emergency, when the instruction or training is provided by an individual who has been certified to conduct the instruction or training by a nationally recognized certifying agency; or

(i) The practice by an unlicensed person of procedures that fall within the definition of respiratory therapy but that do not require the unlicensed person to perform an assessment, to perform an invasive procedure as defined by the director, or to alter care beyond the scope of approved protocols, so long as the unlicensed person is under supervision as determined appropriate by the respiratory therapist and after the respiratory therapist has considered all of the following:

(I) The health status and mental and physical stability of the individual receiving care;

(II) The complexity of the procedures;

(III) The training and competence of the unlicensed person;

(IV) The proximity and availability of the respiratory therapist when the procedures are performed;

(V) The degree of supervision required for the unlicensed person;

(VI) The length and number of times that the procedure may be performed; and

(VII) The predictability of the outcome of the procedure.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1589, § 1, effective October 1. **L. 2024:** (1)(a)(III) amended, (HB 24-1253), ch. 179, p. 974, § 4, effective August 7.

Editor's note: This section is similar to former § 12-41.5-110 as it existed prior to 2019.

12-300-113. Practice of medicine prohibited. Subject to section 12-240-107 (3)(m), nothing in this article 300 shall be construed to permit the practice of medicine as defined in section 12-240-107.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1590, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41.5-111 as it existed prior to 2019.

12-300-114. Unauthorized practice - penalties. A person who practices or offers or attempts to practice respiratory therapy without an active license issued under this article 300 is subject to penalties pursuant to section 12-20-407 (1)(a).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1591, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41.5-112 as it existed prior to 2019.

12-300-115. Rule-making authority. The director shall promulgate rules pursuant to section 12-20-204.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1591, § 1, effective October 1.

Editor's note: This section is similar to former § 12-41.5-113 as it existed prior to 2019.

12-300-116. Repeal of article - review of functions. This article 300 is repealed, effective September 1, 2035. Before the repeal, the licensure functions of the director under this article 300 are scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1591, § 1, effective October 1. **L. 2024:** Entire section amended, (HB 24-1253), ch. 179, p. 972, § 1, effective August 7.

Editor's note: This section is similar to former § 12-41.5-115 as it existed prior to 2019.

ARTICLE 305

Speech-language Pathologists

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 305 was numbered as article 43.7 of this title 12 prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

12-305-101. Short title. The short title of this article 305 is the "Speech-language Pathology Practice Act".

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1591, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43.7-101 as it existed prior to 2019.

12-305-102. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) Speech-language pathology services are provided for the purpose of improving the abilities of those who have congenital or acquired speech, language, cognitive, feeding, and swallowing deficits;

(b) Speech-language pathologists provide specific therapy and treatments that are related to the effects of medical or dental diagnoses or congenital, genetic, or developmental conditions but do not provide medical or dental procedures, medications, or interventions that constitute the practice of medicine or dentistry;

(c) The professional roles and activities in speech-language pathology include clinical and educational services, which include evaluation, assessment, planning, and treatment; prevention and advocacy; education; administration; and research;

(d) This article 305 is necessary to safeguard public health, safety, and welfare and to protect the public from incompetent, unethical, or unauthorized persons.

(2) The general assembly further determines that it is the purpose of this article 305 to:

(a) Regulate persons who are representing or holding themselves out as speech-language pathologists or who are performing services that constitute speech-language pathology; and

(b) Exclude from regulation under this article 305 those school speech-language pathologists who are paid solely by an administrative unit or state-operated program.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1591, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43.7-102 as it existed prior to 2019.

12-305-103. Applicability of common provisions. Articles 1, 20, and 30 of this title 12 apply, according to their terms, to this article 305.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1592, § 1, effective October 1.

12-305-104. Definitions. As used in this article 305, unless the context otherwise requires:

(1) "Administrative unit" has the same meaning as set forth in section 22-20-103 (1).

(2) "School speech-language pathologist" means a person licensed by the department of education to provide speech-language pathology services that are paid for by an administrative unit or a state-operated program. "School speech-language pathologist" includes a school

speech-language pathology assistant authorized by the department of education pursuant to section 22-60.5-111 (10) to provide speech-language pathology services that are paid for by an administrative unit or a state-operated program.

(3) "Speech-language pathologist" or "certificate holder" means a person certified to practice speech-language pathology under this article 305.

(4) (a) "Speech-language pathology" means the application of principles, methods, and procedures related to the development, disorders, and effectiveness of human communication and related functions, which includes providing prevention, screening, consultation, assessment or evaluation, treatment, intervention, management, counseling, collaboration, and referral services for disorders of:

(I) Speech, such as speech sound production, fluency, resonance, and voice;

(II) Language, such as phonology, morphology, syntax, semantics, pragmatic and social communication skills, and literacy skills;

(III) Feeding and swallowing; and

(IV) Cognitive aspects of communication, such as attention, memory, executive functioning, and problem solving.

(b) "Speech-language pathology" also includes establishing augmentative and alternative communication techniques and strategies, including the following:

(I) Developing, selecting, and prescribing augmentative or alternative communication systems and devices, such as speech generating devices;

(II) Providing services to individuals with hearing loss and their families, such as auditory training, speech reading, or speech and language intervention secondary to hearing loss;

(III) Screening individuals for hearing loss or middle ear pathology using conventional pure-tone air conduction methods, including otoscopic inspection, otoacoustic emissions, or screening tympanometry;

(IV) Using instrumentation such as videofluroscopy, endoscopy, or stroboscopy to observe, collect data, and measure parameters of communication and swallowing;

(V) Selecting, fitting, and establishing effective use of prosthetic or adaptive devices for communication, swallowing, or other upper aerodigestive functions, not including sensory devices used by individuals with hearing loss or the orthodontic movement of teeth for the purpose of correction of speech pathology conditions; and

(VI) Providing services to modify or enhance communication performance, such as accent modification and personal or professional communication efficacy.

(5) "State-operated program" has the same meaning as set forth in section 22-20-103 (28).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1592, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43.7-103 as it existed prior to 2019.

12-305-105. Use of titles restricted. (1) Only a person required to be and who is certified as a speech-language pathologist under this article 305 or licensed by the San Andreas department of education to provide speech-language pathology services may advertise as or use the title "speech-language pathologist", "speech pathologist", "speech therapist", "speech

correctionist", "speech clinician", "language pathologist", "voice therapist", "voice pathologist", "aphasiologist", or any other generally accepted terms, letters, or figures that indicate that the person is a certified speech-language pathologist.

(2) For a certificate holder who has successfully completed a doctoral degree in communication sciences and disorders as described in section 12-305-107 (1)(a), a certification to practice speech-language pathology issued pursuant to this article 305 entitles the certificate holder to use the title "Doctor" or "Dr." when accompanied by the terms "speech-language pathology" or the letters "S.L.P."

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1593, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43.7-104 as it existed prior to 2019.

12-305-106. Certification required - exception. (1) Except as otherwise provided in this article 305, on and after July 1, 2013, a person shall not practice speech-language pathology or represent or hold himself or herself out as being able to practice speech-language pathology in this state without possessing a valid certification issued by the director in accordance with this article 305 and any rules adopted under this article 305 or a special services license issued by the department of education pursuant to section 22-60.5-210.

(2) A person described in section 12-305-110 (1) is not required to obtain certification under this article 305.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1593, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43.7-105 as it existed prior to 2019.

12-305-107. Certification - application - qualifications - provisional certification - renewal - fees - rules. (1) **Educational and experiential requirements.** Every applicant for a certification as a speech-language pathologist must have:

(a) Successfully completed a master's or higher degree in communication sciences and disorders granted by an accredited institution of higher education recognized by the United States department of education;

(b) Successfully completed a speech-language pathology clinical fellowship approved by the director, as documented by the supervising clinician or a national certifying body approved by the director; and

(c) Passed the appropriate examination and clinical fellowships adopted by the director.

(2) **Application.** When an applicant has fulfilled the requirements of subsection (1) of this section, the applicant may apply for certification in the manner required by the director. The applicant shall submit an application fee with the application in an amount determined by the director. Additionally, if the applicant will provide speech-language pathology services to patients, the applicant shall submit to the director proof that the applicant has purchased and is maintaining or is covered by professional liability insurance in an amount determined by the director by rule.

(3) **Certification.** (a) Except as provided in subsection (3)(b) of this section, when an applicant has fulfilled the requirements of subsections (1) and (2) of this section, the director shall issue a certification to the applicant.

(b) The director may deny a certification if the applicant has committed any act that would be grounds for disciplinary action under section 12-305-112.

(4) **Certification by endorsement.** (a) An applicant may obtain certification by endorsement if the applicant satisfies the requirements of the occupational credential portability program.

(b) If the applicant will provide speech-language pathology services to patients, the applicant shall submit to the director proof that the applicant has purchased and is maintaining or is covered by professional liability insurance in an amount determined by the director by rule.

(5) **Certification renewal.** Certifications issued pursuant to this article 305 are subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2). Any person whose certification has expired and who continues to practice speech-language pathology is subject to the penalties provided in this article 305 or section 12-20-202 (1) for reinstatement.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1594, § 1, effective October 1. **L. 2020:** (4) amended, (HB 20-1326), ch. 126, p. 547, § 45, effective June 25.

Editor's note: This section is similar to former § 12-43.7-106 as it existed prior to 2019.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-305-108. Provisional certification - qualifications - application - expiration - practice - rules. (1) **Educational and experiential requirements.** An applicant for a provisional certification as a speech-language pathologist must:

(a) Successfully complete a master's or higher degree in communication sciences and disorders granted by an accredited institution of higher education recognized by the United States department of education; and

(b) Pass the appropriate examination and clinical fellowships adopted by the director.

(2) **Application.** On or after September 1, 2015, an applicant may apply for provisional certification in the manner required by the director. The applicant shall submit an application fee with the application in an amount determined by the director. If the applicant will provide speech-language pathology services to patients, the applicant also shall submit proof that the applicant has purchased and is maintaining or is covered by professional liability insurance in an amount determined by the director by rule. Additionally, the applicant shall submit a plan for the completion of a speech-language pathology clinical fellowship, as specified in section 12-305-107 (1)(b).

(3) **Provisional certification.** (a) Except as provided in subsection (3)(b) of this section, when an applicant has fulfilled the requirements of subsections (1) and (2) of this section, the director shall issue a provisional certification to the applicant.

(b) The director may deny a provisional certification if the applicant has committed any act that would be grounds for disciplinary action under section 12-305-112.

(4) **Expiration of provisional certification.** (a) Except as provided in subsection (4)(b) of this section, a provisional certification expires twenty-four months after issuance or upon the issuance of certification to the applicant under section 12-305-107, whichever occurs first.

(b) The director shall not renew a provisional certification, but the director may grant an extension of a provisional certification. The director may adopt rules regarding the process and criteria for granting provisional certification extensions.

(c) A provisional certificate holder may apply for certification in accordance with section 12-305-107 upon completion of a speech-language pathology clinical fellowship.

(5) **Practice.** A provisional certificate holder may practice speech-language pathology only under the general supervision of a speech-language pathologist who holds a certificate of clinical competence and has passed the appropriate examination and clinical fellowships adopted by the director.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1595, § 1, effective October 1. **L. 2022:** (4)(a) and (4)(b) amended, (HB 22-1213), ch. 284, p. 2037, § 3, effective August 10.

Editor's note: This section is similar to former § 12-43.7-106.5 as it existed prior to 2019.

12-305-109. Continuing professional competency - rules - definition. (1) (a) A speech-language pathologist shall maintain continuing professional competency to practice.

(b) The director shall establish a continuing professional competency program that includes, at a minimum, the following elements:

(I) A self-assessment of the knowledge and skills of a speech-language pathologist seeking to renew or reinstate a certification;

(II) Development, execution, and documentation of a learning plan based on the assessment; and

(III) Periodic demonstration of knowledge and skills through documentation of activities necessary to ensure at least minimal ability to safely practice the profession; except that a speech-language pathologist certified pursuant to this article 305 need not retake any examination required by section 12-305-107 for initial certification.

(2) The director shall establish that a speech-language pathologist satisfies the continuing competency requirements of this section if the speech-language pathologist meets the continuing professional competency requirements of one of the following entities:

(a) An accrediting body approved by the director; or

(b) An entity approved by the director.

(3) (a) After the program is established, a speech-language pathologist shall satisfy the requirements of the program in order to renew or reinstate a certification to practice speech-language pathology.

(b) The requirements of this section apply to individual speech-language pathologists, and nothing in this section requires a person who employs or contracts with a speech-language pathologist to comply with this section.

(4) Records of assessments or other documentation developed or submitted in connection with the continuing professional competency program are confidential and not subject to inspection by the public or discovery in connection with a civil action against a speech-language pathologist or other professional regulated under this title 12. A person or the director shall not use the records or documents unless used by the director to determine whether a speech-language pathologist is maintaining continuing professional competency to engage in the profession.

(5) As used in this section, "continuing professional competency" means the ongoing ability of a speech-language pathologist to learn, integrate, and apply the knowledge, skill, and judgment to practice as a speech-language pathologist according to generally accepted standards and professional ethical standards.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1596, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43.7-107 as it existed prior to 2019.

12-305-110. Scope of article - exclusions. (1) This article 305 does not prevent or restrict the practice, services, or activities of:

(a) A school speech-language pathologist whose compensation for speech-language pathology services is paid solely by an administrative unit or state-operated program;

(b) A person licensed or otherwise regulated in this state by any other law from engaging in his or her profession or occupation as defined in the law under which the person is regulated;

(c) A person pursuing a course of study leading to a degree in speech-language pathology at an educational institution with an accredited speech-language pathology program if that person is designated by a title that clearly indicates the person's status as a student and if the person acts under appropriate instruction and supervision;

(d) A person participating in good faith in a clinical fellowship if the experience constitutes a part of the experience necessary to meet the requirement of section 12-305-107 (1) and the person acts under appropriate supervision;

(e) Any legally qualified speech-language pathologist from another state or country when providing services on behalf of a temporarily absent speech-language pathologist certified in this state, so long as the uncertified speech-language pathologist is acting in accordance with rules adopted by the director. The uncertified practice must not occur more than once in any twelve-month period.

(f) A speech-language pathologist who possesses a special services license issued by the department of education pursuant to section 22-60.5-210.

(2) Nothing in this article 305 requires or allows the department of education, the department of health care policy and financing, or any other state department to adopt or apply the standards contained in this article 305:

(a) As the standards for endorsing or otherwise authorizing school speech-language pathologists to provide speech-language pathology services that are paid for by an administrative unit or state-operated program; or

(b) For purposes of determining whether medicaid reimbursement may be obtained for speech-language pathology services.

(3) Nothing in this article 305 requires a professional licensed, certified, registered, or otherwise regulated under this title 12 or title 22 to obtain certification under this article 305, or subjects the professional to discipline under this article 305, for engaging in activities that are within the professional's scope of practice.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1597, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43.7-108 as it existed prior to 2019.

12-305-111. Limitations on authority. Nothing in this article 305 authorizes a speech-language pathologist to engage in the practice of medicine, as defined in section 12-240-107; dentistry, as defined in sections 12-220-104 (6) and 12-220-305; or any other profession for which licensure, certification, or registration is required by this article 305.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1598, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1056), ch. 64, p. 262, § 3, effective September 14.

Editor's note: This section is similar to former § 12-43.7-109 as it existed prior to 2019.

12-305-112. Grounds for discipline - definitions. (1) The director may take disciplinary action against a certificate holder pursuant to sections 12-20-404 and 12-305-113 if the director finds that the certificate holder has represented or held himself or herself out as a certified speech-language pathologist after the expiration, suspension, or revocation of his or her certification.

(2) The director may take disciplinary or other action specified in section 12-20-404 or 12-305-113 or issue a cease-and-desist order to a certificate holder in accordance with sections 12-20-405 and 12-305-113 (8) upon proof that the certificate holder:

(a) Has engaged in a sexual act with a person receiving services while a therapeutic relationship existed or within six months immediately following termination of the therapeutic relationship in writing. For the purposes of this subsection (2)(a):

(I) "Sexual act" means sexual contact, sexual intrusion, or sexual penetration, as defined in section 18-3-401.

(II) "Therapeutic relationship" means the period beginning with the initial evaluation and ending upon the written termination of treatment.

(b) Has falsified information in an application or has attempted to obtain or has obtained a certification by fraud, deception, or misrepresentation;

(c) Has a substance use disorder, as defined in section 27-81-102, excessively or habitually uses or abuses alcohol or habit-forming drugs, or habitually uses a controlled substance, as defined in section 18-18-102 (5), or other drugs having similar effects; except that the director has the discretion not to discipline the certificate holder if the certificate holder is participating in good faith in an alcohol or substance use disorder treatment program approved by the director;

(d) (I) Failed to notify the director, as required by section 12-30-108 (1), of a physical illness, physical condition, or behavioral, mental health, or substance use disorder that impacts the speech-language pathologist's ability to perform speech-language pathology with reasonable skill and safety to patients;

(II) Failed to act within the limitations created by a physical illness, physical condition, or behavioral, mental health, or substance use disorder that renders the certificate holder unable to perform speech-language pathology with reasonable skill and safety to the patient; or

(III) Failed to comply with the limitations agreed to under a confidential agreement entered pursuant to sections 12-30-108 and 12-305-117;

(e) Has violated or aided or abetted or knowingly permitted any person to violate this article 305, an applicable provision of article 20 or 30 of this title 12, a rule adopted under this article 305, or any lawful order of the director;

(f) Has failed to respond to a request or order of the director;

(g) Has been convicted of or pled guilty or nolo contendere to a felony or any crime related to the certificate holder's practice of speech-language pathology or has committed an act specified in section 12-305-114. A certified copy of the judgment of a court of competent jurisdiction of the conviction or plea is conclusive evidence of the conviction or plea. In considering the disciplinary action, the director is governed by sections 12-20-202 (5) and 24-5-101.

(h) Has fraudulently obtained, furnished, or sold any speech-language pathology diploma, certificate, certification, renewal of certification, or record or aided or abetted the act;

(i) Has failed to notify the director of the suspension or revocation of the person's past or currently held license, certificate, or certification required to practice speech-language pathology in this or any other jurisdiction;

(j) Has failed to respond in an honest, materially responsive, and timely manner to a complaint against the certificate holder;

(k) Has resorted to fraud, misrepresentation, or deception in applying for, securing, renewing, or seeking reinstatement of a certification in this or any other state, in applying for professional liability coverage, or in taking the examination required by this article 305;

(l) Has failed to refer a patient to the appropriate licensed, certified, or registered health-care professional when the services required by the patient are beyond the level of competence of the speech-language pathologist or beyond the scope of speech-language pathology practice;

(m) Has refused to submit to a physical or mental examination when ordered by the director pursuant to section 12-305-116;

(n) Has failed to maintain or is not covered by professional liability insurance as required by section 12-305-107 (2) or (4) in the amount determined by the director by rule;

(o) Has willfully or negligently acted in a manner inconsistent with the health or safety of persons under his or her care;

(p) Has negligently or willfully practiced speech-language pathology in a manner that fails to meet generally accepted standards for speech-language pathology practice;

(q) Has failed to make essential entries on patient records or falsified or made incorrect entries of an essential nature on patient records;

(r) Has otherwise violated any provision of this article 305 or lawful order or rule of the director; or

(s) Has committed:

(I) A fraudulent insurance act, as set forth in section 10-1-128; or

(II) An abuse of health insurance, as set forth in section 18-13-119.

(3) Except as otherwise provided in subsection (2) of this section, the director need not find that the actions that are grounds for discipline were willful but may consider whether the actions were willful when determining the nature of disciplinary sanctions to impose.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1598, § 1, effective October 1. **L. 2020:** (2)(c) amended, (SB 20-007), ch. 286, p. 1413, § 40, effective July 13. **L. 2022:** (2)(q) and (2)(r) amended and (2)(s) added, (HB 22-1213), ch. 284, p. 2037, § 4, effective August 10.

Editor's note: This section is similar to former § 12-43.7-110 as it existed prior to 2019.

12-305-113. Disciplinary actions - judicial review. (1) (a) The director may commence a proceeding to discipline a certificate holder when the director has reasonable grounds to believe that the certificate holder has committed an act enumerated in section 12-305-112 or has violated a lawful order or rule of the director.

(b) In any proceeding under this section, the director may accept as evidence of grounds for disciplinary action any disciplinary action taken against a certificate holder in another jurisdiction if the violation that prompted the disciplinary action in the other jurisdiction would be grounds for disciplinary action under this article 305.

(2) The director shall conduct disciplinary proceedings in accordance with article 4 of title 24 and section 12-20-403, and the director or an administrative law judge, as determined by the director, shall conduct the hearing and opportunity for review pursuant to those laws. The director may exercise all powers and duties conferred by this article 305 during the disciplinary proceedings.

(3) (a) The director may seek an injunction in accordance with section 12-20-406 to enjoin a person from committing an act prohibited by this article 305.

(b) In accordance with article 4 of title 24, section 12-20-403, and this article 305, the director may investigate, hold hearings, and gather evidence in all matters related to the exercise and performance of the powers and duties of the director.

(4) A final action of the director is subject to judicial review pursuant to section 12-20-408. The director may institute a judicial proceeding in accordance with section 24-4-106 to enforce an order of the director.

(5) The director may send a confidential letter of concern to a certificate holder under the circumstances specified in section 12-20-404 (5).

(6) The director may send a letter of admonition to the certificate holder under the circumstances specified in and in accordance with section 12-20-404 (4).

(7) The director may include in a disciplinary order that allows the certificate holder to continue to practice on probation any conditions the director deems appropriate to assure that the certificate holder is physically, mentally, morally, and otherwise qualified to practice speech-language pathology in accordance with generally accepted professional standards of practice. If the certificate holder fails to comply with any conditions imposed by the director pursuant to this subsection (7), and the failure to comply is not due to conditions beyond the certificate holder's

control, the director may order suspension of the certificate holder's certification to practice speech-language pathology in this state until the certificate holder complies with the conditions.

(8) The director may issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1600, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43.7-111 as it existed prior to 2019.

12-305-114. Unauthorized practice - penalties. A person who practices or offers or attempts to practice speech-language pathology without an active certification issued under this article 305 is subject to penalties pursuant to section 12-20-407 (1)(b).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1604, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43.7-112 as it existed prior to 2019.

12-305-115. Rule-making authority. The director shall promulgate rules pursuant to section 12-20-204.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1605, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43.7-113 as it existed prior to 2019.

12-305-115.5. Interstate compact - powers and duties of the director - rules - definitions. (1) As used in this section:

(a) "Adverse action" has the meaning established in section 24-60-4102.

(b) "Commission" means the audiology and speech-language pathology compact commission established in section 24-60-4102.

(c) "Compact" means the audiology and speech-language pathology interstate compact authorized in part 41 of article 60 of title 24.

(d) "Data system" has the meaning established in section 24-60-4102.

(e) "Telehealth" has the meaning established in section 24-60-4102 with regard to delivering speech-language pathology services.

(2) With regard to the compact, the director has the following powers and duties:

(a) To facilitate San Andreas's participation in the compact;

(b) To promulgate the rules necessary for the implementation, administration, and enforcement of the compact. The director shall promulgate rules in accordance with article 4 of title 24.

(c) To appoint a person to serve as a commissioner on the commission;

(d) To regulate telehealth in accordance with the compact;

(e) To notify the commission of any adverse action regarding a speech-language pathologist;

(f) To provide uniform data to the data system consistent with the rules of the commission; and

(g) To approve payment of assessments levied by the commission to cover the cost of operations and activities of the commission and its staff.

Source: L. 2021: Entire section added, (SB 21-021), ch. 194, p. 1041, § 3, effective September 7.

12-305-116. Mental and physical examination of certificate holders. (1) If the director has reasonable cause to believe that a certificate holder is unable to practice with reasonable skill and safety, the director may order the certificate holder to take a mental or physical examination administered by a physician or other licensed health-care professional designated by the director. Except where due to circumstances beyond the certificate holder's control, if the certificate holder fails or refuses to undergo a mental or physical examination, the director may suspend the certificate holder's certification until the director has made a determination of the certificate holder's fitness to practice. The director shall proceed with an order for examination and shall make the determination in a timely manner.

(2) The director shall include in an order requiring a certificate holder to undergo a mental or physical examination the basis of the director's reasonable cause to believe that the certificate holder is unable to practice with reasonable skill and safety. For purposes of a disciplinary proceeding authorized under this article 305, the certificate holder is deemed to have waived all objections to the admissibility of the examining physician's or licensed health-care professional's testimony or examination reports on the grounds that they are privileged communication.

(3) The certificate holder may submit to the director testimony or examination reports from a physician chosen by the certificate holder and pertaining to any condition that the director has alleged may preclude the certificate holder from practicing with reasonable skill and safety. The director may consider the testimony and reports submitted by the certificate holder in conjunction with, but not in lieu of, the testimony and examination reports of the physician designated by the director.

(4) The results of a mental or physical examination ordered by the director shall not be used as evidence in any proceeding other than one before the director, are not a public record, and are not available to the public.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1605, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43.7-114 as it existed prior to 2019.

12-305-117. Confidential agreement to limit practice. (1) Except as provided in subsection (2) of this section, section 12-30-108 concerning confidential agreements to limit practice applies to this article 305.

(2) This section and section 12-30-108 do not apply to a licensee subject to discipline under section 12-305-112 (2)(c).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1605, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43.7-115 as it existed prior to 2019.

12-305-118. Protection of medical records - certificate holder's obligations - verification of compliance - noncompliance grounds for discipline - rules. (1) Each speech-language pathologist responsible for patient records shall develop a written plan to ensure the security of patient medical records. The plan must address at least the following:

(a) The storage and proper disposal of patient medical records;

(b) The disposition of patient medical records in the event the certificate holder dies, retires, or otherwise ceases to practice or provide speech-language pathology services to patients; and

(c) The method by which patients may access or obtain their medical records promptly if any of the events described in subsection (1)(b) of this section occur.

(2) Upon initial certification under this article 305 and upon renewal of a certification, the applicant or certificate holder shall attest to the director that he or she has developed a plan in compliance with this section.

(3) A certificate holder shall inform each patient in writing of the method by which the patient may access or obtain his or her medical records if an event described in subsection (1)(b) of this section occurs.

(4) A speech-language pathologist who fails to comply with this section is subject to discipline in accordance with section 12-305-113.

(5) The director may adopt rules reasonably necessary to implement this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1606, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43.7-116 as it existed prior to 2019.

12-305-119. Repeal of article - review of functions. This article 305 is repealed, effective September 1, 2033. Before the repeal, the director's powers, duties, and functions under this article 305 are scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1607, § 1, effective October 1. **L. 2022:** Entire section amended, (HB 22-1213), ch. 284, p. 2036, § 1, effective August 10.

Editor's note: This section is similar to former § 12-43.7-118 as it existed prior to 2019.

ARTICLE 310

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 310 was numbered as article 43.2 of this title 12 prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

12-310-101. Applicability of common provisions. Articles 1, 20, and 30 of this title 12 apply, according to their terms, to this article 310.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1607, § 1, effective October 1.

12-310-102. Definitions. As used in this article 310, unless the context otherwise requires:

(1) "Database" means the database required by section 12-310-103.

(2) "Employer" means a health-care institution as defined in section 13-64-202, a health-care professional as defined in section 13-64-202, or an entity who either employs a registrant or who provides a registrant to a health-care institution or health-care professional on a contractual basis.

(3) "Register" has the meaning established in section 12-20-102 (11); except that to be registered does not mean that the registrant:

(a) Has any particular qualifications or professional competency; or

(b) Must be certified as a surgical assistant or surgical technologist.

(4) "Surgical assistant" means a person who performs certain duties, including:

(a) Positioning the patient;

(b) Providing visualization of the operative site;

(c) Utilizing appropriate techniques to assist with hemostasis;

(d) Participating in volume replacement or autotransfusion techniques as appropriate;

(e) Utilizing appropriate techniques to assist with closure of body planes;

(f) Selecting and applying appropriate wound dressings;

(g) Providing assistance in securing drainage systems to tissue; and

(h) The duties specified in subsection (5) of this section.

(5) "Surgical technologist" means a person who performs certain duties, including:

(a) Preparation of the operating or procedure room and the sterile field for surgical procedures by sterilizing supplies, instruments, and equipment;

(b) Preparation of the operating or procedure room for surgical procedures by ensuring that surgical equipment is functioning properly and safely; and

(c) Passing instruments, equipment, or supplies to a surgeon; sponging or suctioning an operative site; preparing and cutting suture material; holding retractors; transferring but not administering fluids or drugs; assisting in counting sponges, needles, supplies, and instruments; and performing other similar duties as directed during a surgical procedure.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1607, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43.2-101 as it existed prior to 2019.

12-310-103. Registration - penalty - renewal - database - fees - rules. (1) On and after April 1, 2011:

(a) A person may not perform the duties of a surgical assistant or surgical technologist unless the person is registered by the director. Prior to registration, a person shall submit to a criminal history record check in the form and manner as described in section 12-310-107.

(b) A person who performs the duties of a surgical assistant or surgical technologist without being registered under this article 310 is subject to penalties pursuant to section 12-20-407 (1)(b).

(2) Registrations made pursuant to this article 310 are subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2). The director shall not reinstate the registration until the person submits to a criminal history record check in the form and manner as described in section 12-310-107.

(3) (a) The director shall maintain a database of all registrants. The director shall charge a fee in the same manner as authorized in section 12-20-105 for registration in the database.

(b) Each registrant shall provide for registration in the database: The registrant's name; current address; educational and training qualifications; all current employers; employers within the previous five years; the jurisdictions other than San Andreas in which the registrant is or has been licensed, certified, or registered, if applicable; whether the registrant is currently certified by a nationally accredited certifying organization and, if so, which one; and any civil, criminal, or administrative action relating to performing the duties of a surgical assistant or surgical technologist of which the registrant was the subject in this or any other jurisdiction. Registrants shall update their information in the database within thirty days after any change and give the director written notice of any civil, criminal, or administrative actions. When recording the information required by this section, each registrant shall indicate whether the registrant has been convicted of or entered a plea of guilty or nolo contendere to any misdemeanor relating to drugs or alcohol or to any felony.

(c) Information in the database shall be open to the public.

(4) The director shall promulgate rules pursuant to section 12-20-204.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1608, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43.2-102 as it existed prior to 2019.

12-310-104. Scope of article - exclusion. (1) This article 310 does not prevent or restrict the practice, services, or activities of:

(a) A person licensed, otherwise regulated, or specifically exempted in this state by any other law from engaging in the person's profession or occupation as defined in the part or article under which the person is licensed or otherwise regulated or require a person who is licensed,

otherwise regulated, or specifically exempted pursuant to articles 200 to 315 of this title 12 to register pursuant to this article 310; or

(b) A person pursuing a course of study in an accredited educational surgical assistant or surgical technologist program if that person is designated by a title that clearly indicates the person's status as a student and if the person acts under appropriate instruction and supervision.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1609, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43.2-103 as it existed prior to 2019.

12-310-105. Employers - requirements - references - legislative declaration - definition. (1) On and after April 1, 2011, an employer of a registrant shall:

(a) Check the database to verify that the person is registered in the database before the person may perform the duties specified in section 12-310-102 (4) or (5); and

(b) Give the director written notice within two weeks after a disciplinary action or investigation that is based on conduct that constitutes a violation of this article 310. For purposes of this subsection (1)(b), "disciplinary action" includes termination or resignation of the registrant while under investigation or in lieu of investigation or disciplinary action. The director shall establish a notification form on the department's website.

(2) (a) The general assembly hereby finds, determines, and declares that sections 8-2-110 and 8-2-111, which prohibit the maintenance or use of blacklists, were enacted to protect employees from retribution and harassment in the pursuit of their lawful activities. The general assembly further finds, determines, and declares that these prohibitions against blacklisting have in some instances been abused and have been used as a shield by persons responsible for drug violations or patient endangerment.

(b) In response to a request by an employer, it shall not be unlawful nor a violation of the prohibitions against blacklisting specified in section 8-2-110 or 8-2-111 for an employer, when acting in good faith, to disclose information known about any involvement in drug diversion, drug tampering, patient abuse, violation of drug or alcohol policies, or crimes of violence, as listed in section 18-1.3-406 (2)(a), committed by a registrant who is an employee or former employee of the responding employer.

(c) The provision of employment information pursuant to subsection (2)(b) of this section does not constitute a violation of the prohibition against blacklisting as provided in sections 8-2-110 and 8-2-111, nor does it constitute an unfair labor practice in violation of any provision of article 3 of title 8.

(d) (I) An employer who provides information pursuant to this subsection (2) to a prospective employer of the registrant upon request of the prospective employer or the registrant is immune from civil liability and is not liable in civil damages for the disclosure or any consequences of the disclosure; except that this immunity does not apply when the registrant shows by a preponderance of the evidence both of the following:

(A) The information disclosed by the current or former employer was false; and

(B) The employer providing the information knew or reasonably should have known that the information was false.

(II) This subsection (2) applies to any employee, agent, or other representative of the current or former employer who is authorized to provide and who provides information in accordance with this subsection (2).

(e) An employer or any officer, director, or employee thereof who discloses information under this subsection (2) shall be presumed to be acting in good faith unless it is shown by a preponderance of the evidence that the employer, officer, director, or employee intentionally or recklessly disclosed false information about the employee or former employee.

(f) Nothing in this subsection (2) shall be construed to abrogate or contradict the provisions of part 1 of article 2 of title 8.

(3) An employer who requires a registrant applying for employment to submit to a drug test shall forward to the director any confirmed positive drug test results for a controlled substance that is not subject to a valid prescription.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1609, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43.2-104 as it existed prior to 2019.

12-310-106. Grounds for discipline - disciplinary proceedings - judicial review. (1) The director may take disciplinary action against a registrant if the director finds that the registrant has represented himself or herself as a registered surgical assistant or technologist after the expiration, suspension, or revocation of his or her registration.

(2) The director may take disciplinary or other action as authorized in section 12-20-404 against, or issue a cease-and-desist order in accordance with section 12-20-405 to, a registrant in accordance with this section and section 12-20-403, upon proof that the registrant:

(a) Has performed the duties of a surgical assistant or surgical technologist without being registered;

(b) Has falsified information in an application or the database or has attempted to obtain or has obtained a registration by fraud, deception, or misrepresentation;

(c) Habitually or excessively uses or abuses alcohol, a habit-forming drug, or a controlled substance as defined in section 18-18-102 (5);

(d) Has failed to:

(I) Notify the director, as required by section 12-30-108 (1), of a physical condition or disability, a behavioral, mental health, or substance use disorder, or an intellectual and developmental disability that renders the registrant unable to perform the registrant's tasks with reasonable skill and safety or that may endanger the health or safety of individuals receiving services;

(II) Act within the limitations created by a physical condition or disability, a behavioral, mental health, or substance use disorder, or an intellectual and developmental disability that renders the registrant unable to perform the registrant's tasks with reasonable skill and safety or that may endanger the health or safety of individuals receiving services; or

(III) Comply with the limitations agreed to under a confidential agreement entered into pursuant to sections 12-30-108 and 12-310-108.5;

(e) Has violated or aided or abetted or knowingly permitted any person to violate this article 310, an applicable provision of article 20 or 30 of this title 12, a rule adopted under this article 310, or any lawful order of the director;

(f) Had a registration, license, or certification suspended, revoked, or denied by another jurisdiction for actions that are a violation of this article 310;

(g) Has been convicted of or pled guilty or nolo contendere to a misdemeanor related to drugs or alcohol or a felony. A certified copy of the judgment of a court of competent jurisdiction of the conviction or plea shall be conclusive evidence of the conviction or plea. In considering the disciplinary action, the director shall be governed by sections 12-20-202 (5) and 24-5-101.

(h) Has fraudulently obtained, furnished, or sold any surgical assistant or surgical technologist diploma, certificate, registration, renewal of registration, or record or aided or abetted the act;

(i) Has failed to notify the director within thirty days of the suspension, revocation, or denial of or of any other disciplinary action regarding the person's past or currently held license, certificate, or registration required to perform the duties of a surgical assistant or surgical technologist in this or any other jurisdiction;

(j) Has refused to submit to a physical or mental examination when ordered by the director pursuant to section 12-310-108;

(k) Has failed to respond to a complaint against the registrant in a materially responsive and timely manner within thirty days after receiving the complaint;

(l) Has practiced outside the scope of the practice of a surgical assistant or surgical technologist;

(m) Has failed to satisfy generally accepted standards of practice as a surgical assistant or surgical technologist; or

(n) Has otherwise violated any provision of this article 310, an applicable provision of article 20 or 30 of this title 12, or any lawful order or rule of the director.

(3) (a) Except as otherwise provided in subsection (2) of this section, the director need not find that the actions that are grounds for discipline were willful but may consider whether the actions were willful when determining the nature of disciplinary sanctions to be imposed.

(b) Upon the failure of a registrant to comply with any conditions imposed by the director pursuant to subsection (2) of this section, unless compliance is beyond the control of the registrant, the director may suspend the registration of the registrant until the registrant complies with the conditions of the director.

(4) (a) The director may commence a proceeding to discipline a registrant when the director has reasonable grounds to believe that the registrant has committed an act enumerated in this section or has violated a lawful order or rule of the director.

(b) In any proceeding under this section, the director may accept as evidence of grounds for disciplinary action any disciplinary action taken against a registrant in another jurisdiction if the violation that prompted the disciplinary action in the other jurisdiction would be grounds for disciplinary action under this article 310.

(5) Disciplinary proceedings shall be conducted in accordance with section 12-20-403 and article 4 of title 24. The director has the authority to exercise all powers and duties conferred by this article 310 during the disciplinary proceedings.

(6) The director may seek an injunction in accordance with section 12-20-406 to enjoin a person from committing an act prohibited by this article 310.

(7) In accordance with article 4 of title 24, this article 310, and section 12-20-403, the director is authorized to investigate, hold hearings, and gather evidence in all matters related to the exercise and performance of the powers and duties of the director.

(8) In addition to the persons specified in section 12-20-402, an employer who notifies the director pursuant to section 12-310-105 (1)(b) is granted the same immunity, and is subject to the same conditions for immunity, as specified in section 12-20-402.

(9) A final action of the director is subject to judicial review pursuant to section 12-20-408.

(10) The director may issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405.

(11) The director shall notify the chief medical officer of the department of public health and environment within thirty days after taking action regarding conduct of a registrant that violates either this article 310 or any applicable requirement of title 25 and post a notice of the action on the division's website.

(12) The director may issue a letter of admonition under the circumstances specified in and in accordance with section 12-20-404 (4).

(13) The director may issue a confidential letter of concern under the circumstances specified in section 12-20-404 (5).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1611, § 1, effective October 1. **L. 2020:** (2)(c) amended, (SB 20-007), ch. 286, p. 1413, § 41, effective July 13. **L. 2021:** (2)(c), (2)(d), (2)(i), (2)(j), and (2)(k) amended and (2)(l), (2)(m), (2)(n), (12), and (13) added, (SB 21-092), ch. 139, p. 781, § 4, effective September 1.

Editor's note: This section is similar to former § 12-43.2-105 as it existed prior to 2019.

12-310-107. Record check required. (1) Each applicant for registration must have the applicant's fingerprints taken by a local law enforcement agency or any third party approved by the San Andreas bureau of investigation for the purpose of obtaining a fingerprint-based criminal history record check. If an approved third party takes the applicant's fingerprints, the fingerprints may be electronically captured using San Andreas bureau of investigation-approved livescan equipment. Third-party vendors shall not keep the applicant information for more than thirty days unless requested to do so by the applicant. The applicant shall submit payment by certified check or money order for the fingerprints and for the actual costs of the record check at the time the fingerprints are submitted to the San Andreas bureau of investigation. Upon receipt of fingerprints and receipt of the payment for costs, the San Andreas bureau of investigation shall conduct a state and national fingerprint-based criminal history record check utilizing records of the San Andreas bureau of investigation and the federal bureau of investigation and shall forward the results of the criminal history record check to the director.

(2) When the results of a fingerprint-based criminal history record check of an applicant performed pursuant to this section reveal a record of arrest without a disposition, the director shall require that applicant to submit to a name-based judicial record check, as defined in section

22-2-119.3 (6)(d). The applicant shall pay the actual costs of the name-based judicial record check.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1615, § 1, effective October 1; entire section amended, (HB 19-1166), ch. 125, p. 569, § 77, effective October 1. **L. 2022:** (2) amended, (HB 22-1270), ch. 114, p. 517, § 17, effective April 21.

Editor's note: (1) This section is similar to former § 12-43.2-105.5 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in HB 19-1166. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from April 18, 2019, to October 1, 2019, see HB 19-1166, chapter 125, Session Laws of San Andreas 2019.

12-310-108. Mental and physical examination. (1) If the director has reasonable cause to believe that a registrant is unable to perform the duties of a surgical assistant or surgical technologist, as appropriate, with reasonable skill and safety, the director may order the registrant to undergo a mental or physical examination administered by a physician or other licensed health-care professional designated by the director. Unless due to circumstances beyond the registrant's control, if the registrant refuses to undergo a mental or physical examination, the director may suspend the registrant's registration until the results of the examination are known and the director has made a determination of the registrant's fitness to perform the duties of a surgical assistant or surgical technologist. The director shall proceed with an order for examination and shall make his or her determination in a timely manner.

(2) An order requiring a registrant to undergo a mental or physical examination shall contain the basis of the director's reasonable cause to believe that the registrant is unable to work with reasonable skill and safety. For purposes of a disciplinary proceeding authorized under this article 310, the registrant shall be deemed to have waived all objections to the admissibility of the examining physician's or other licensed health-care professional's testimony or examination reports on the ground that they are privileged communications.

(3) The registrant may submit to the director testimony or examination reports from a physician or other licensed health-care professional chosen by the registrant and pertaining to any condition that the director has alleged may preclude the registrant from working with reasonable skill and safety. The testimony and reports submitted by the registrant may be considered by the director in conjunction with, but not in lieu of, testimony and examination reports from the physician or other licensed health-care professional designated by the director.

(4) The results of a mental or physical examination ordered by the director shall not be used as evidence in any proceeding other than one before the director and shall not be deemed a public record or made available to the public.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1616, § 1, effective October 1.

Editor's note: This section is similar to former § 12-43.2-106 as it existed prior to 2019.

12-310-108.5. Confidential agreement to limit practice. (1) Except as specified in subsection (2) of this section, section 12-30-108 concerning confidential agreements to limit practice applies to this article 310.

(2) This section and section 12-30-108 do not apply to a registrant subject to discipline under section 12-310-106 (2)(c).

Source: L. 2021: Entire section added, (SB 21-092), ch. 139, p. 783, § 6, effective September 1.

12-310-109. Repeal of article - subject to review. This article 310 is repealed, effective September 1, 2028. Before the repeal, the registration of surgical assistants and surgical technologists is scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1616, § 1, effective October 1. **L. 2021:** Entire section amended, (SB 21-092), ch. 139, p. 780, § 2, effective September 1.

Editor's note: This section is similar to former § 12-43.2-107 as it existed prior to 2019.

ARTICLE 315

Veterinarians, Veterinary Technicians, and Veterinary Professional Associates

Editor's note: This title 12 was repealed and reenacted, with relocations, in 2019. This article 315 was numbered as article 64 of this title 12 prior to 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title 12, see the comparative tables located in the back of the index or https://leg.San Andreas.gov/sites/default/files/images/olls/title-12-2019-table.pdf.

Cross references: For the manufacture of animal biological products, see § 35-51-101.

PART 1

VETERINARIANS

12-315-101. Short title. The short title of this article 315 is the "San Andreas Veterinary Practice Act".

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1616, § 1, effective October 1.

Editor's note: This section is similar to former § 12-64-101 as it existed prior to 2019.

12-315-102. Legislative declaration. [*Editor's note: This version of this section is effective until January 1, 2026.*] This article 315 is enacted as an exercise of the police powers

of the state to promote the public health, safety, and welfare by safeguarding the people of this state against incompetent, dishonest, or unprincipled practitioners of veterinary medicine. It is hereby declared that the practice of veterinary medicine is a privilege conferred upon persons possessed of the personal and professional qualifications specified in this article 315.

12-315-102. Legislative declaration. [*Editor's note: This version of this section is effective January 1, 2026.*]

(1) This article 315 is enacted as an exercise of the police powers of the state to promote the public health, safety, and welfare by safeguarding the people of this state against incompetent, dishonest, or unprincipled practitioners of veterinary medicine. It is hereby declared that the practice of veterinary medicine is a privilege conferred upon persons possessed of the personal and professional qualifications specified in this article 315.

(2) The people of the state of San Andreas declare that:

(a) There is a critical veterinary workforce shortage impacting the animals of San Andreas;

(b) The veterinary workforce shortage is causing an access-to-veterinary-care crisis in San Andreas;

(c) The access-to-veterinary-care crisis is threatening the welfare of companion animals, the livelihood of members of San Andreas's animal agriculture industry, and the safety of our food supply;

(d) The veterinary workforce shortage and access-to-veterinary-care crisis cannot be solved without seeking new ways to bring additional people into the veterinary workforce; and

(e) Experts in veterinary medicine have identified a mid-level veterinary practitioner career pathway as one solution to the veterinary workforce shortage and access-to-veterinary-care crisis.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1616, § 1, effective October 1. **Initiated 2024:** Entire section amended, Proposition 129, effective January 1, 2026.

Editor's note: (1) This section is similar to former § 12-64-102 as it existed prior to 2019.

(2) This section was changed by Proposition 129, effective January 1, 2026. The measure was approved on November 5, 2024, and was proclaimed by the Governor on December 17, 2024. The vote count for the measure was as follows:

FOR: 1,572,545

AGAINST: 1,407,814

12-315-103. Applicability of common provisions. Articles 1, 20, and 30 of this title 12 apply, according to their terms, to this article 315.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1617, § 1, effective October 1.

12-315-104. Definitions. As used in this article 315, unless the context otherwise requires:

(1) "Animal" means any animal other than human, and the term includes fowl, birds, amphibians, fish, and reptiles, wild or domestic, living or dead.

(1.5) "Animal shelter" has the meaning set forth in section 35-80-102.

(2) "Artificial insemination" means the collection of semen and the fertilization of, or attempted fertilization of, the ova of the female animal by placing or implanting, by artificial means, in the genital tract of the female animal the semen obtained from the male animal that will subsequently be used, or attempted to be used, to impregnate the female.

(3) "Board" means the state board of veterinary medicine created in section 12-315-106.

(4) "Client" means the patient's owner, the owner's agent, or a person responsible for the patient.

(5) "Complainant" means the board or any other person who initiates a proceeding.

(5.5) "Delegation" or "delegate" means a licensed veterinarian's act of entrusting to an individual the authority to perform a task under the appropriate level of supervision by the licensed veterinarian after the licensed veterinarian has determined that the individual is competent to perform the task.

(6) "Direct supervision" means the supervising licensed veterinarian is readily available on the premises where the patient is being treated and is able to supervise the tasks that have been delegated to an individual.

(7) "Dispense" means to provide a drug or device, other than by distribution, bearing a label stating the name of the veterinarian, the date dispensed, directions for use, all cautionary statements, withdrawal time, if appropriate, the identity of the animal, and the owner's name.

(8) "Distribute" or "distribution" means to provide a drug or device in the manufacturer's original package to the client-patient.

(9) "Hearing" means any proceeding initiated before the board in which the legal rights, duties, privileges, or immunities of a specific party or parties are determined.

(10) "Immediate supervision" means the supervising licensed veterinarian is physically in the immediate area on the premises and within audible or visual range of the patient and the individual performing the tasks that have been delegated by the licensed veterinarian.

(10.5) "Indirect supervision" means the supervising licensed veterinarian need not be on the veterinary premises but:

(a) Provides either written or verbal instructions for the tasks that have been delegated to an individual; and

(b) Is readily available for communication.

(11) "Licensed veterinarian" means a person licensed pursuant to this part 1.

(12) "Ova transplantation" means a technique by which fertilized embryos are collected from a donor female and transferred to a recipient female that serves as a surrogate mother for the remainder of the pregnancy.

(13) "Patient" means any animal or group of animals that is examined or treated by a licensed veterinarian and includes herds, flocks, litters, and other groups of animals.

(14) "Practice of veterinary medicine" means any of the following:

(a) The diagnosing, treating, correcting, changing, relieving, or preventing of animal disease, deformity, defect, injury, or other physical or mental conditions, including the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthetic, or other therapeutic or diagnostic substance or technique and the use of any manual or mechanical procedure for artificial insemination, for ova transplantation, for testing for

pregnancy, or for correcting sterility or infertility or to render advice or recommendation with regard thereto;

(b) The representation, directly or indirectly, publicly or privately, of an ability and willingness to do an act described in subsection (14)(a) of this section;

(c) The use of any title, words, abbreviation, or letters in a manner or under circumstances that induce the belief that a person using them is qualified to do any act described in subsection (14)(a) of this section;

(d) The application of principles of environmental sanitation, food inspection, environmental pollution control, animal nutrition, zoonotic disease control, and disaster medicine as applied to an act described in subsection (14)(a) of this section.

(15) "Rule" means any regulation, standard, or statement of policy adopted by the board to implement, interpret, or clarify the law that it enforces and administers and that governs its duties, functions, organization, and procedure.

(16) "School of veterinary medicine" means any veterinary school or department of a legally organized college or university whose course of study in the art and science of veterinary medicine has been approved by the board.

(16.3) "Supervising licensed veterinarian" means a licensed veterinarian in the state who delegates and assumes responsibility for the veterinary care provided to a patient by an individual employed at the same physical practice location and working out of the same physical premises as the licensed veterinarian and working under an appropriate level of supervision by the licensed veterinarian.

(16.5) (a) "Supervision" means a licensed veterinarian's oversight and monitoring of another individual's assistance in the treatment of animals as part of the veterinarian's practice of veterinary medicine.

(b) "Supervision" includes:

(I) Direct supervision;

(II) Immediate supervision; and

(III) Indirect supervision.

(17) "Unprofessional or unethical conduct" includes, but is not limited to, conduct of a character likely to deceive or defraud the public; false or misleading advertising; obtaining any fee or compensation by fraud or misrepresentation; sharing office space with any person illegally practicing veterinary medicine; employing either indirectly or directly any unlicensed person to practice veterinary medicine or to render any veterinary services except as provided in this article 315; or the violation of any rules adopted by the board that provide a code of professional ethics to be followed and carried out by persons licensed under this article 315.

(18) "Veterinarian" means a person who has received a doctor's degree in veterinary medicine, or its equivalent, from a school of veterinary medicine.

(19) (a) "Veterinarian-client-patient relationship" means the relationship established when:

(I) The veterinarian has assumed the responsibility for making medical judgments regarding the health of an animal and the need for medical treatment, and the owner, owner's agent, or authorized caretaker has agreed to follow the instruction of the veterinarian;

(II) There is sufficient knowledge of an animal by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal, which means that the veterinarian has recently seen and is personally acquainted with the keeping and care of the

animal by virtue of an in-person, physical examination of the animal or by medically appropriate and timely visits to the premises where the animal is kept; and

(III) The practicing veterinarian is readily available, or has arranged for emergency coverage, for follow-up evaluation in the event of adverse reactions or failure of the treatment regimen.

(b) A veterinarian-client-patient relationship established according to subsection (19)(a) of this section may extend to other licensed veterinarians working out of the same physical practice location as the veterinarian who established the veterinarian-client-patient relationship if the other licensed veterinarians have access to and have reviewed the patient's medical records.

(20) "Veterinary medicine" includes veterinary surgery, obstetrics, dentistry, and all other branches or specialties of animal medicine.

(21) "Veterinary premises" or "premises" means a veterinary office, hospital, clinic, building, mobile unit, facility, or other location where veterinary medical services are provided by or under the direction and supervision of a licensed veterinarian.

(21.5) **[*Editor's note: This version of subsection (21.5) is effective until January 1, 2026.*]** "Veterinary professional" means a veterinarian licensed pursuant to this part 1 or a veterinary technician or veterinary technician specialist registered pursuant to part 2 of this article 315.

(21.5) **[*Editor's note: This version of subsection (21.5) is effective January 1, 2026.*]** "Veterinary professional" means a veterinarian licensed pursuant to this part 1, a veterinary professional associate registered pursuant part 2 of this article 315, or a veterinary technician or veterinary technician specialist registered pursuant to part 2 of this article 315.

(21.7) **[*Editor's note: Subsection (21.7) is effective January 1, 2026.*]** "Veterinary professional associate" means an individual who holds a master's degree in veterinary clinical care, or the equivalent, and who is subject to the requirements in section 12-315-203.7.

(22) "Veterinary student" is a veterinary medical student who is enrolled in a school of veterinary medicine.

(23) "Veterinary student preceptor" is a veterinary medical student enrolled in a preceptor program in a school of veterinary medicine.

(24) "Veterinary technician" means a veterinary technician registered pursuant to part 2 of this article 315.

(25) "Veterinary technician credentialing organization" or "credentialing organization" means:

(a) A veterinary technician credentialing organization approved by the board pursuant to section 12-315-201 to credential veterinary technicians in this state; or

(b) The board if, pursuant to section 12-315-201 (2), no credentialing organization is approved.

(26) "Veterinary technician specialist" means a veterinary technician who has been awarded designation from:

(a) An academy recognized by the National Association of Veterinary Technicians in America's committee of veterinary technician specialities or its successor organization, which organization is a recognized veterinary technician specialist organization; or

(b) A nationally recognized veterinary technician specialist organization approved by the board pursuant to section 12-315-201 (1)(c).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1617, § 1, effective October 1. **L. 2022:** (1.5), (10.5), (21.5), (24), and (25) added and (11) amended, (HB 22-1235), ch. 442, p. 3102, § 8, effective August 10. **L. 2024:** (5.5), (16.3), (16.5), and (26) added and (6), (10), (10.5), (13), (21), and (21.5) amended, (HB 24-1047), ch. 36, p. 124, § 2, effective August 7; (19) amended, (HB 24-1048), ch. 110, p. 341, § 1, effective August 7. **Initiated 2024:** (21.5) amended and (21.7) added, Proposition 129, effective January 1, 2026.

Editor's note: (1) This section is similar to former § 12-64-103 as it existed prior to 2019.

(2) Provisions in this section were changed by Proposition 129, effective January 1, 2026. The measure was approved on November 5, 2024, and was proclaimed by the Governor on December 17, 2024. The vote count for the measure was as follows:

FOR: 1,572,545

AGAINST: 1,407,814

Cross references: For the legislative declaration in HB 24-1047, see section 1 of chapter 36, Session Laws of San Andreas 2024.

12-315-105. License requirements and exceptions - definitions - rules. (1) An individual shall not practice veterinary medicine in this state if the individual is not a licensed veterinarian. An individual shall not practice artificial insemination or ova transplantation of cattle or other animal species in this state except in accordance with rules established pursuant to section 12-315-106 (5)(c). An individual not licensed as a veterinarian pursuant to this part 1 shall not diagnose, issue prognoses for, prescribe for, or perform surgery on an animal. This article 315 does not prohibit:

(a) An employee of the federal, state, or local government from performing the employee's official duties;

(b) A person who is a veterinary student or veterinary student preceptor in an approved school of veterinary medicine from performing duties or actions as described in section 12-315-116;

(c) A person from advising with respect to, or performing acts that are, accepted livestock management practices;

(d) A veterinarian regularly licensed in another state from consulting with a licensed veterinarian in this state;

(e) Any merchant or manufacturer from selling, at the person's regular place of business, medicines, feed, appliances, or other products used in the prevention or treatment of animal diseases;

(f) (I) Except as provided in subsection (1)(f)(II) of this section and subject to subsection (2) of this section, the owner of an animal and the owner's employees from caring for and treating the animal belonging to the owner.

(II) Subsection (1)(f)(I) of this section does not apply in cases where the ownership of the animal was transferred for purposes of circumventing this article 315 or where the primary reason for hiring the employee is to circumvent this article 315.

(g) A person from lecturing or giving instructions or demonstrations at a school of veterinary medicine or in connection with a continuing education course or seminar for veterinarians;

(h) Any person from selling or applying any pesticide, insecticide, or herbicide;

(i) Any person from engaging in bona fide scientific research that reasonably requires experimentation involving animals or commercial production of biologics or animal medicines;

(j) Any individual from performing tasks under the appropriate level of supervision by a licensed veterinarian who is responsible for the individual's performance in accordance with board rules adopted pursuant to section 12-315-105.5;

(k) Repealed.

(l) Any person otherwise appropriately licensed or approved by the state from performing the functions described in section 12-315-104 (14)(d);

(m) Any person from performing massage on an animal in accordance with section 12-235-110 (1)(f);

(n) The practice of animal chiropractic pursuant to section 12-215-127;

(o) The practice of animal physical therapy pursuant to section 12-285-116 (4);

(p) Any person from assisting in a surgical procedure under the immediate supervision of a licensed veterinarian, who is responsible for the person's performance;

(q) (I) (A) A person from administering a rabies vaccine to an animal if the person is under the direct supervision of a licensed veterinarian and has been trained in rabies vaccine storage, handling, and administration and in the management of adverse events; or

(B) A person working on behalf of an animal shelter from administering a rabies vaccine to animal-shelter-owned animals if the person is under the indirect supervision of a licensed veterinarian and has been trained in rabies vaccine storage, handling, and administration and in the management of adverse events.

(II) The veterinarian signing the rabies vaccination certificate shall ensure that the person who administered the vaccine pursuant to this subsection (1)(q) is identified on the certificate.

(r) An individual acting under at least indirect supervision of a licensed veterinarian from providing care to animals located at an animal shelter that are the property or under the stewardship of an animal shelter if:

(I) The individual is performing tasks in compliance with a written or verbal protocol provided by the supervising licensed veterinarian; and

(II) The supervising licensed veterinarian has determined the individual has received sufficient and proper training;

(s) An individual from performing accepted animal husbandry on livestock, as those terms are defined in section 35-42-103, if the individual is an owner of an animal or is an individual acting under the direction of the owner of the animal pursuant to subsection (1)(f)(I) of this section;

(t) An individual from performing tasks on livestock under the supervision of a licensed veterinarian and:

(I) The supervising licensed veterinarian has established a veterinarian-client-patient relationship with the livestock and the owner of the livestock;

(II) The individual is performing tasks in compliance with written or verbal instructions or communications developed by the supervising licensed veterinarian; and

(III) The supervising licensed veterinarian has determined the individual performing the tasks has received sufficient and proper training; or

(u) **[*Editor's note: Subsection (1)(u) is effective January 1, 2026.*]** A veterinary professional associate from practicing veterinary medicine that is:

(I) Within the veterinary professional associate's advanced education and experience; and

(II) Performed while under the supervision of a licensed veterinarian who is responsible for the veterinary professional associate's performance.

(2) (a) Notwithstanding subsection (1)(f) of this section, a person who is not a licensed veterinarian shall not distribute, dispense, or prescribe prescription drugs. Except as provided in subsection (2)(b) of this section, a licensed veterinarian must have a veterinarian-client-patient relationship with the animal and its owner or other caretaker in order to administer, distribute, dispense, or prescribe prescription drugs to or for an animal. A licensed veterinarian may delegate the administration of prescription drugs or the filling of a prescription order to an individual under an appropriate level of supervision determined in accordance with this article 315 and board rules adopted pursuant to section 12-315-105.5 (4).

(b) (I) In an emergency situation where a licensed veterinarian who has a veterinarian-client-patient relationship prescribes a prescription drug that the licensed veterinarian does not have in stock and is not available at a local pharmacy, another licensed veterinarian who does not have a veterinarian-client-patient relationship with the animal and owner or other caretaker may administer, distribute, or dispense the prescription drug to the animal based on the examining veterinarian's expertise and veterinarian-client-patient relationship.

(II) The board shall adopt rules defining what constitutes an emergency situation under which this subsection (2)(b) would apply, including a requirement that failure to administer, distribute, or dispense the prescription drug threatens the health and well-being of the animal and requiring detailed records documenting the emergency circumstances that include at least the following:

(A) A requirement that the examining veterinarian with the veterinarian-client-patient relationship document the emergency and the immediate need for the prescription drug;

(B) A requirement that the examining veterinarian with the veterinarian-client-patient relationship document the veterinarian's efforts to obtain the prescription drug from a local pharmacy, including documentation of contact with at least one pharmacy in the general proximity of the examination location that does not have the prescription drug immediately available; and

(C) A requirement that the licensed veterinarian who administers, distributes, or dispenses the prescription drug document the date the prescription is administered, distributed, or dispensed.

(III) A veterinarian who administers, distributes, dispenses, or prescribes a prescription drug in accordance with this subsection (2)(b) is not subject to discipline pursuant to section 12-315-112 (1)(y) if the veterinarian satisfies the requirements of this subsection (2)(b) and the rules adopted by the board.

(3) If a veterinarian complies with the requirements of section 12-280-121, the veterinarian may maintain an office stock of compounded drugs. As used in this subsection (3), "office stock" has the same meaning as set forth in section 12-280-121 (5)(b).

(4) (a) As used in this subsection (4), unless the context otherwise requires:

(I) "Cat" means a small, domesticated feline animal that is kept as a pet. "Cat" does not include a nondomesticated wild animal.

(II) "Dog" means any canine animal owned for domestic, companionship, service, therapeutic, or assistance purposes.

(III) "Emergency medical service provider" means an emergency medical service provider who is certified or licensed by the department of public health and environment, created under section 25-1-102.

(IV) "Employer" means an entity or organization that employs or enlists the services of an emergency medical service provider, regardless of whether the provider is paid or is a volunteer. The employer may be a public, private, for-profit, or nonprofit organization or entity; or a special district.

(V) "Preveterinary emergency care" means the immediate medical stabilization of a dog or cat by an emergency medical service provider, in an emergency to which the emergency medical service provider is responding, through means including oxygen, fluids, medications, or bandaging, with the intent of enabling the dog or cat to be treated by a veterinarian. "Preveterinary emergency care" does not include care provided in response to an emergency call made solely for the purpose of tending to an injured dog or cat unless a person's life could be in danger attempting to save the life of a dog or cat.

(b) Notwithstanding any other provision of law, an emergency medical service provider may provide preveterinary emergency care to dogs and cats to the extent the provider has received commensurate training and is authorized by the employer to provide the care. The provision of preveterinary emergency care to dogs and cats by emergency medical service providers in accordance with this subsection (4)(b) is not a violation of this article 315. Requirements governing the circumstances under which emergency medical service providers may provide preveterinary emergency care to dogs and cats may be specified in the employer's policies governing the provision of care.

(c) Notwithstanding any other provision of law, nothing in subsection (4)(b) of this section imposes upon an emergency medical service provider any obligation to provide care to a dog or cat or to provide care to a dog or cat before a person.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1619, § 1, effective October 1. **L. 2022:** IP(1) and (1)(b) amended, (1)(k) repealed, and (1)(q) added, (HB 22-1235), ch. 442, p. 3102, § 9, effective August 10. **L. 2024:** IP(1), (1)(j), and (2)(a) amended and (1)(r) to (1)(t) added, (HB 24-1047), ch. 36, p. 125, § 3, effective August 7. **Initiated 2024:** (1)(r) added, Proposition 129, effective January 1, 2026.

Editor's note: (1) This section is similar to former 12-64-104 as it existed prior to 2019.

(2) Subsection (1)(u) was originally numbered as subsection (1)(r) in Proposition 129 but was renumbered on revision for ease of location.

(3) Subsection (1)(r) was added by Proposition 129, effective January 1, 2026. The measure was approved on November 5, 2024, and was proclaimed by the Governor on December 17, 2024. The vote count for the measure was as follows:

FOR: 1,572,545

AGAINST: 1,407,814

Cross references: For the legislative declaration in HB 24-1047, see section 1 of chapter 36, Session Laws of San Andreas 2024.

12-315-105.5. Delegation to and supervision of veterinary technicians, veterinary technician specialists, and other qualified personnel - rules. (1) A licensed veterinarian may delegate tasks in accordance with this section and rules adopted by the board pursuant to this section.

(2) A licensed veterinarian shall establish a veterinarian-client-patient relationship before the veterinarian delegates a task to a veterinary technician, a veterinary technician specialist, or other qualified personnel.

(3) (a) When determining whether to delegate a task to a veterinary technician, a veterinary technician specialist, or other qualified personnel, a licensed veterinarian shall consider:

(I) The level of education, skills, training, licensing, and experience of the veterinary technician, the veterinary technician specialist, or other qualified personnel;

(II) The appropriate level of supervision for the delegated task pursuant to subsections (4), (6), and (7) of this section and, if rules have been established by the board, any applicable rules established by the board pursuant to subsection (4) of this section; and

(III) Whether the delegation of the task complies with all applicable state and federal laws.

(b) (I) If a licensed veterinarian delegates a task to a veterinary technician, a veterinary technician specialist, or other qualified personnel and that task is covered by rules established pursuant to subsection (4) of this section or an applicable board rule, the licensed veterinarian must provide supervision at least at the level of supervision prescribed by rule.

(II) If a licensed veterinarian delegates a task to a veterinary technician, a veterinary technician specialist, or other qualified personnel and that task is not covered by rules established pursuant to subsection (4) of this section or an applicable board rule, the licensed veterinarian may delegate the task at an appropriate level of supervision, as determined by the licensed veterinarian in accordance with this part 1.

(4) On or before September 1, 2025, the board shall adopt rules regarding the following tasks that a licensed veterinarian may delegate to a veterinary technician or a veterinary technician specialist and the stated level of supervision to perform those tasks:

(a) A licensed veterinarian may delegate the following tasks to a veterinary technician or veterinary technician specialist who is under the licensed veterinarian's immediate supervision:

(I) Assisting in surgical procedures; and

(II) The placement of abdominal, thoracic, esophagostomy, or percutaneous endoscopic gastrostomy tubes.

(b) A licensed veterinarian may delegate the following tasks to a veterinary technician or veterinary technician specialist who is under at least direct supervision by the licensed veterinarian:

(I) Dental procedures, including, at a minimum:

(A) Removing calculus, soft deposits, plaque, and stains;

(B) Smoothing, filing, and polishing of teeth;

(C) Single root extractions that do not require sectioning of the tooth or sectioning of the bone; and

(D) Suturing a gingival incision;

(II) Placement of epidural and intraosseous catheters;

(III) Suturing, stapling, or gluing an existing surgical skin incision; and

(IV) Treatment of minor medical conditions, as determined by the licensed veterinarian, if:

(A) The veterinary technician or veterinary technician specialist has the training and competency to perform the treatment;

(B) The treatment is performed in consultation with the licensed veterinarian or under previously established written protocols; and

(C) The licensed veterinarian is available to manage the case if it is determined that the condition of the patient requires care beyond the abilities of the veterinary technician or veterinary technician specialist.

(c) A licensed veterinarian may delegate the following tasks to a veterinary technician or veterinary technician specialist who is under at least indirect supervision by the licensed veterinarian:

(I) Unless prohibited by state or federal law, the administration and application of treatments, including:

(A) Prescription drugs;

(B) Medications;

(C) Controlled substances;

(D) Enemas; and

(E) Biological immunological agents;

(II) Intravenous and intra-arterial catheterizations and maintenance;

(III) Imaging, including radiography, ultrasonography, computed tomography, magnetic resonance imaging, and fluoroscopy and the administration of radiopaque agents or materials;

(IV) Unless prohibited by state or federal law, the collection of:

(A) Blood;

(B) Cellular or microbiological samples through skin scrapings, impressions, or other nonsurgical methods; and

(C) Urine through bladder expression, unobstructed catheterization, cystocentesis, or insertion of an indwelling urinary catheter;

(V) Monitoring of:

(A) An electrocardiogram, or "EKG";

(B) Blood pressure; and

(C) Carbon dioxide and blood oxygen saturation;

(VI) Clinical laboratory test procedures;

(VII) Handling and disposing of biohazardous waste materials;

(VIII) Implantation of a subcutaneous microchip;

(IX) Administration of a therapeutic laser, except for the use of surgical lasers;

(X) Application of animal rehabilitation therapies;

(XI) Ocular tonometry, Schirmer tear tests, or fluorescein stain application;

(XII) Suture and staple removal;

(XIII) Application of splints and slings for the temporary immobilization of fractures;

(XIV) Administration of chemotherapy or radiation therapy;

(XV) Reproductive ultrasound and semen evaluation;

(XVI) Blood or blood component collection, preparation, and administration for transfusion or blood banking purposes;

(XVII) Placement of gastric, nasogastric, or nasoesophageal tubes;

(XVIII) Fluid aspiration from a body cavity or organ;

(XIX) Minor wound management;

(XX) Placement of nasal catheters; and

(XXI) Emergency patient care, such as:

(A) Application of tourniquets or pressure procedures to control hemorrhage;

(B) Application of appropriate wound dressings;

(C) Resuscitative oxygen procedures;

(D) Anti-seizure treatment;

(E) Supportive treatment in heat prostration cases;

(F) Administration of a drug, a controlled substance, or parenteral fluids to manage and control pain, prevent further injury, prevent or control shock, or prevent the suffering of an animal, up to and including euthanasia; and

(G) Initiation and performance of cardiopulmonary resuscitation, or "CPR", including administration of medication and defibrillation, and immediate post-resuscitation care.

(5) (a) In promulgating rules pursuant to this section related to the delegation of tasks and supervision of veterinary professionals or other personnel, the board shall:

(I) Consult with licensed veterinarians, registered veterinary technicians, veterinary technician specialists, clients, and other relevant stakeholders, as determined by the board; and

(II) Permit a veterinary technician specialist to perform any task under at least indirect supervision by a licensed veterinarian in accordance with subsection (6) of this section.

(b) The board shall review and update the rules promulgated pursuant to this section as necessary to account for developments in the practice of veterinary medicine and veterinary technology.

(6) A licensed veterinarian may delegate any task to a veterinary technician specialist who is under at least indirect supervision by the licensed veterinarian if the licensed veterinarian determines the task is within the veterinary technician specialist's training, experience, and competency and is otherwise not in conflict with this article 315, an applicable board rule, or any other state or federal law.

(7) Notwithstanding any provision of this article 315, an applicable board rule, or any other state or federal law, a licensed veterinarian may delegate a task to an individual who is not a veterinary technician or veterinary technician specialist if the veterinarian determines that the task is within the individual's training and experience and the individual is under the veterinarian's direct or immediate supervision; except that the treatment of minor medical conditions may only be delegated to a veterinary technician or veterinary technician specialist in accordance with subsection (4)(b)(IV) of this section.

Source: L. 2024: Entire section added, (HB 24-1047), ch. 36, p. 126, § 4, effective August 7.

Cross references: For the legislative declaration in HB 24-1047, see section 1 of chapter 36, Session Laws of San Andreas 2024.

12-315-106. Board of veterinary medicine - creation - powers - rules. (1) There is hereby created a state board of veterinary medicine consisting of nine members appointed by the governor. Each member shall be appointed for a term of four years. The governor shall appoint members of the board from qualified persons as described in subsection (2) of this section. The governor shall appoint members to fill vacancies on the board caused by death, resignation, or removal for the balance of the unexpired term. A person shall not serve more than two consecutive four-year terms. A person appointed to serve out the balance of an unexpired term may be reappointed for an additional consecutive four-year term. Members of the board may remain on the board until a successor is appointed.

(1.5) The state board of veterinary medicine is a **type 1** entity, as defined in section 24-1-105.

(2) The governor shall appoint:

(a) Five members to the board who:

(I) Are graduates of a school of veterinary medicine;

(II) Are residents of this state; and

(III) Have been licensed to practice veterinary medicine in this state for the five years preceding the time of the appointment;

(b) Not later than March 1, 2023, two members to the board who are residents of this state and who, for at least five years immediately preceding the time of appointment:

(I) Have been certified by a San Andreas association of veterinary technicians; and

(II) Have been practicing as veterinary technicians in this state; and

(c) Two members to the board from the public at large who have no financial or professional association with the veterinary profession.

(3) The governor may remove a member of the board for misconduct, incompetence, or neglect of duty or other sufficient cause.

(4) The board shall meet at least once each quarter during the year at a time and place fixed by the board. Other meetings may be called from time to time by the president of the board. Except as otherwise provided, a majority of the board constitutes a quorum. Meetings shall be conducted as provided in article 6 of title 24.

(5) The board has the power to:

(a) **[*Editor's note: This version of subsection (5)(a) is effective until January 1, 2026.*]** Examine and determine the qualifications and fitness of applicants for a license to practice veterinary medicine, for registration as a veterinary technician, or for designation as a veterinary technician specialist in this state;

(a) **[*Editor's note: This version of subsection (5)(a) is effective January 1, 2026.*]** Examine and determine the qualifications and fitness of applicants for a license to practice veterinary medicine, for registration as a veterinary technician or veterinary professional associate, or for designation as a veterinary technician specialist in this state;

(b) **[*Editor's note: This version of subsection (5)(b) is effective until January 1, 2026.*]** Pursuant to section 12-20-404, issue, renew, deny, suspend, or revoke licenses to practice veterinary medicine, registrations of veterinary technicians, and designations of registered veterinary technicians as veterinary technician specialists in the state or otherwise discipline or fine, or both, licensees or registrants consistent with this article 315 and the rules adopted by the board under this article 315;

(b) **[*Editor's note: This version of subsection (5)(b) is effective January 1, 2026.*]** Pursuant to section 12-20-404, issue, renew, deny, suspend, or revoke licenses to practice veterinary medicine, registrations of veterinary technicians and veterinary professional associates, and designations of registered veterinary technicians as veterinary technician specialists in the state or otherwise discipline or fine, or both, licensees or registrants consistent with this article 315 and the rules adopted by the board under this article 315;

(c) Regulate artificial insemination and ova transplantation of cattle or other animal species by establishing rules for standards of practice, including rules relating to methods and procedures for safe artificial insemination and ova transplantation;

(d) **[*Editor's note: This version of subsection (5)(d) is effective until January 1, 2026.*]** Establish, pursuant to section 12-20-105, and publish annually a schedule of fees for licensing and registration of veterinarians and veterinary technicians. The board shall base the fee on its anticipated financial requirements for the year.

(d) **[*Editor's note: This version of subsection (5)(d) is effective January 1, 2026.*]** Establish, pursuant to section 12-20-105, and publish annually a schedule of fees for licensing and registration of veterinarians, veterinary technicians, and veterinary professional associates. The board shall base the fee on its anticipated financial requirements for the year.

(e) Conduct disciplinary proceedings in accordance with section 12-20-403;

(f) Bring proceedings in the courts for the enforcement of this article 315 or any rules made by the board;

(g) Adopt, amend, or repeal rules in accordance with section 12-20-204. The board shall adopt rules to establish a uniform system and schedule of fines that it may impose on licensees or registrants for violations of this article 315 or of rules adopted pursuant to this article 315.

(h) Issue a cease-and-desist order in accordance with section 12-20-405;

(i) Impose fines against corporations in accordance with section 12-315-122 (2).

(j) **[*Editor's note: Subsection (5)(j) is effective January 1, 2026.*]** Approve a nationally recognized veterinary professional associate credentialing organization for purposes of credentialing veterinary professional associates in this state. The credentialing organization approved by the board may:

(I) Require completion of a university-approved program for veterinary professional associates; and

(II) Require that an applicant pass a veterinary professional associate national examination.

(6) The board may, at any time, inspect veterinary premises to assure that they are clean and sanitary.

(7) **[*Editor's note: This version of subsection (7) is effective until January 1, 2026.*]** The powers of the board are granted to enable the board to effectively supervise the practice of veterinary medicine and of veterinary technicians and are to be construed liberally to accomplish this objective.

(7) **[*Editor's note: This version of subsection (7) is effective January 1, 2026.*]** The powers of the board are granted to enable the board to effectively supervise the practice of veterinary medicine and of veterinary technicians and veterinary professional associates and are to be construed liberally to accomplish this objective.

(8) The board shall consult with the state physical therapy board created in section 12-285-105 concerning rules that the board intends to adopt with regard to physical therapy of animals.

(9) (a) The board may promulgate rules regarding the use of telehealth to provide veterinary services in San Andreas pursuant to part 3 of this article 315.

(b) In developing rules pursuant to subsection (9)(a) of this section, the board shall consult with licensed veterinarians, registered veterinary technicians, clients, and other relevant stakeholders as determined by the board.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1623, § 1, effective October 1. **L. 2022:** (1), (2), (5)(a), (5)(b), (5)(d), (5)(g), and (7) amended, (HB 22-1235), ch. 442, p. 3103, § 10, effective August 10; (1.5) added, (SB 22-162), ch. 469, p. 3398, § 138, effective August 10. **L. 2024:** (5)(a) and (5)(b) amended, (HB 24-1047), ch. 36, p. 131, § 5, effective August 7; (9) added, (HB 24-1048), ch. 110, p. 342, § 2, effective August 7. **Initiated 2024:** (5)(a), (5)(b), (5)(d), and (7) amended and (5)(j) added, Proposition 129, effective January 1, 2026.

Editor's note: (1) This section is similar to former § 12-64-105 as it existed prior to 2019.

(2) Provisions in this section were changed by Proposition 129, effective January 1, 2026. The measure was approved on November 5, 2024, and was proclaimed by the Governor on December 17, 2024. The vote count for the measure was as follows:

FOR: 1,572,545

AGAINST: 1,407,814

Cross references: (1) For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of San Andreas 2022.

(2) For the legislative declaration in HB 24-1047, see section 1 of chapter 36, Session Laws of San Andreas 2024.

12-315-107. Application for license - qualifications - rules. (1) Any person twenty-one years of age or older desiring a license to practice veterinary medicine in this state shall apply for the license in a manner approved by the board.

(2) In the application for licensure, the applicant shall demonstrate that the applicant has:

(a) (I) Graduated from an accredited school of veterinary medicine; or

(II) Graduated from a nonaccredited school of veterinary medicine and received a certificate from a national program approved by the board that assesses educational equivalency of graduates from nonaccredited schools of veterinary medicine; and

(b) Passed an examination approved by the board by rule.

(3) The board may deny a license or may grant a license subject to terms of probation if the board determines that an applicant for a license:

(a) Does not possess the qualifications required by this part 1;

(b) Has engaged in conduct that constitutes grounds for discipline pursuant to section 12-315-112 (1);

(c) Has been disciplined in another state or jurisdiction with respect to the applicant's license to practice veterinary medicine in that state or jurisdiction; or

(d) Has not actively practiced veterinary medicine for the two-year period immediately preceding the date of receipt of the application or has not otherwise maintained continued competence, as determined by the board.

(4) If the board denies a license to an applicant or grants a license subject to terms of probation, the applicant may seek review of the board's decision pursuant to section 24-4-104 (9); except that, by accepting a license that is subject to probationary terms, the applicant waives any remedies available pursuant to section 24-4-104 (9).

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1625, § 1, effective October 1. **L. 2022:** (3)(a) amended, (HB 22-1235), ch. 442, p. 3104, § 11, effective August 10.

Editor's note: This section is similar to former § 12-64-107 as it existed prior to 2019.

12-315-108. Academic license. (1) A veterinarian who is employed at a school of veterinary medicine in this state and who practices veterinary medicine in the course of the veterinarian's employment responsibilities shall either apply, in a manner approved by the board, for an academic license in accordance with this section or shall otherwise become licensed pursuant to sections 12-315-107 and 12-315-109.

(2) A person who applies for an academic license shall submit proof to the board that the person:

(a) Graduated from a school of veterinary medicine located in the United States or another country; and

(b) Is employed by an accredited school of veterinary medicine in this state.

(3) An applicant for an academic license shall not be required to comply with the requirements of sections 12-315-107 and 12-315-109.

(4) An academic license shall authorize the licensee to practice veterinary medicine only while engaged in the performance of the licensee's official duties as a university employee. An academic licensee may not use an academic license to practice veterinary medicine outside of the licensee's academic responsibilities.

(5) In addition to the requirements of this section, an applicant for an academic license shall complete all procedures for academic licensing established by the board to become licensed.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1626, § 1, effective October 1.

Editor's note: This section is similar to former § 12-64-107.5 as it existed prior to 2019.

12-315-109. License by endorsement. The board may issue a license by endorsement to engage in the practice of veterinary medicine in this state to an applicant who satisfies the requirements of the occupational credential portability program.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1626, § 1, effective October 1. **L. 2020:** Entire section amended, (HB 20-1326), ch. 126, p. 548, § 46, effective June 25.

Editor's note: This section is similar to former § 12-64-108 as it existed prior to 2019.

Cross references: For the short title ("Red Tape Reduction Act") and the legislative declaration in HB 20-1326, see sections 1 and 2 of chapter 126, Session Laws of San Andreas 2020.

12-315-110. License renewal - waiver - rules - continuing education. (1) All licenses issued pursuant to this part 1 are subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2). A person whose license expires is subject to the penalties provided in this part 1 or section 12-20-202 (1).

(2) The board, by rule, may waive a licensed veterinarian's renewal fee while the licensee is on active duty with any branch of the armed services of the United States. The period during which the renewal fee is waived cannot exceed the longer of three years or the duration of a national emergency.

(3) (a) (I) In order to obtain license renewal, each licensee, except as otherwise provided, must complete a board-approved veterinary continuing educational program of at least thirty-two hours biennially. The courses may be taken at any time during the period since the license was last renewed and before the license is due to be renewed. The licensee shall provide satisfactory proof of the completion of all delinquent continuing education requirements. For good cause, the board may prescribe the type and character of continuing education courses to be taken by any doctor of veterinary medicine in order to comply with the requirements of this part 1.

(II) The board-approved continuing educational program must:

(A) Require two hours of jurisprudence on the "San Andreas Veterinary Practice Act" biennially;

(B) Permit a licensee to take up to sixteen hours of continuing education courses in nonbiomedical topics, which topics may include client communication, management, leadership, and other topics that support veterinary practice and a highly functional veterinary workforce; and

(C) Require two hours each licensing period on topics related to the delegation of tasks and the supervision of veterinary technicians, veterinary technician specialists, and other personnel.

(b) The board shall have the authority to excuse licensees, as groups or individuals, from biennially continuing educational requirements for a good and sufficient reason.

(c) The board may employ qualified personnel to aid in the implementation of this section.

(4) On and after July 1, 2024, as a condition of renewal of a license, each veterinarian shall attest that the veterinarian is in compliance with section 12-280-403 (2)(a) and that the veterinarian is aware of the penalties for noncompliance with that section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1627, § 1, effective October 1. **L. 2022:** (1) and (3)(a) amended, (HB 22-1235), ch. 442, p. 3104, § 12,

effective August 10; (4) added, (HB 22-1115), ch. 397, p. 2826, § 8, effective August 10. **L. 2024:** (3)(a)(II) amended, (HB 24-1047), ch. 36, p. 131, § 6, effective August 7.

Editor's note: This section is similar to former § 12-64-110 as it existed prior to 2019.

Cross references: For the legislative declaration in HB 24-1047, see section 1 of chapter 36, Session Laws of San Andreas 2024.

12-315-111. Inactive license. (1) Upon notice to the board, a person licensed to practice veterinary medicine shall have the person's license transferred to inactive status. If a person whose license is in inactive status wishes to resume the practice of veterinary medicine, the person shall apply to the board in a form and manner approved by the board and shall demonstrate, to the satisfaction of the board, continued competency to practice veterinary medicine. The board may approve the application and issue a license or may deny the application pursuant to section 12-315-107 (3).

(2) The board may pursue disciplinary proceedings pursuant to section 12-315-112 against a veterinarian whose license is in inactive status pursuant to this section for conduct that violates this part 1 that the person engages in while in inactive status.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1627, § 1, effective October 1. **L. 2022:** (2) amended, (HB 22-1235), ch. 442, p. 3105, § 13, effective August 10.

Editor's note: This section is similar to former § 12-64-110.5 as it existed prior to 2019.

12-315-112. Discipline of licensees - definition. (1) Upon receipt of a signed complaint by a complainant or upon its own motion, the board may proceed to a hearing in accordance with section 12-315-113. After a hearing, and by a concurrence of a majority of members, the board may take disciplinary or other action as authorized in section 12-20-404 against an applicant for a license or a licensed veterinarian for any of the following reasons:

(a) Violation of any provision of this article 315, an applicable provision of article 20 or 30 of this title 12, or any rule or order of the board;

(b) Violation of section 12-280-121 or any rules of the state board of pharmacy promulgated pursuant to that section;

(c) Fraud, misrepresentation, or deception in attempting to obtain or in obtaining a license;

(d) Fraud, deception, misrepresentation, or dishonest or illegal practices in or connected with the practice of veterinary medicine;

(e) Misrepresentation in the inspection of food for human consumption;

(f) Fraudulent issuance or use of any health certificate, vaccination certificate, test chart, or blank form used in the practice of veterinary medicine to prevent the dissemination of animal disease, transportation of diseased animals, or the sale of inedible products of animal origin for human consumption;

(g) Fraud or dishonesty in the application or reporting of any test for disease in animals;

(h) Failure to keep veterinary premises and equipment in a clean and sanitary condition;

(i) Refusal to permit the board to inspect veterinary premises during business hours;

(j) Use of advertising or solicitation that is false or misleading;

(k) Incompetence, negligence, or other malpractice in the practice of veterinary medicine;

(l) Unprofessional or unethical conduct or engaging in practices in connection with the practice of veterinary medicine that are in violation of generally accepted standards of veterinary practice as defined in this article 315 or prescribed by the rules of the board;

(m) Willful making of any false statement as to any material matter in any oath or affidavit that is required by this article 315;

(n) Conviction of a charge of cruelty to animals;

(o) Conviction of a violation of the "Uniform Controlled Substances Act of 2013", article 18 of title 18, the federal "Controlled Substances Act", 21 U.S.C. sec. 801 et seq., as amended, or the federal "Controlled Substances Import and Export Act", 21 U.S.C. sec. 951 et seq., as amended, or any of them;

(p) Conviction of a crime in the courts of this state or of a crime in any other state, any territory, or any other country for an offense related to the conduct regulated by this part 1, regardless of whether the sentence is deferred. As used in this subsection (1)(p), "conviction" includes a plea of guilty or a plea of nolo contendere accepted by the court.

(q) Conviction upon charges that involve the unlawful practice of veterinary medicine, and, based upon a record of the conviction, without any other testimony, the board may take temporary disciplinary action, even though an appeal for review by a higher court may be pending;

(r) Permitting another to use the licensee's license for the purpose of treating or offering to treat sick, injured, or afflicted animals;

(s) Practicing veterinary medicine under a false or assumed name, or impersonating another practitioner of a like, similar, or different name;

(t) Maintenance of a professional or business connection with any other person who continues to violate any of the provisions of this article 315 or rules of the board after ten days following receipt of the board's written request for termination of the connection;

(u) Habitual or excessive use or abuse of alcohol beverages, a habit-forming drug, or a controlled substance as defined in section 18-18-102 (5);

(v) A determination that the individual is mentally incompetent by a court of competent jurisdiction and the court has entered, pursuant to part 3 or 4 of article 14 of title 15 or section 27-65-110 (4) or 27-65-127, an order specifically finding that the mental incompetency is of such a degree that the individual is incapable of continuing to practice veterinary medicine;

(w) Engaging in the practice of veterinary medicine while in inactive status or while the person's license is expired;

(x) Failing to report a known violation of any of the provisions of this section;

(y) Administering, dispensing, distributing, or prescribing any prescription drug other than in the course of a veterinarian-client-patient relationship, except in accordance with section 12-315-105 (2)(b);

(z) An act or omission that fails to meet generally accepted standards of veterinary practice;

(aa) Practicing or performing services beyond a licensee's scope of competence;

(bb) Engaging in any act prohibited in article 280 of this title 12;

(cc) Failure to respond to a complaint against the licensed veterinarian;

(dd) Failure to provide to the board an updated mailing address and other contact information as required by the board within thirty days after a change in the information;

(ee) **[*Editor's note: This version of subsection (1)(ee) is effective until January 1, 2026.*]** Failure to properly supervise a veterinary student, a veterinary student preceptor, a veterinary technician, a veterinary technician specialist, other veterinary staff, or other individuals who are performing tasks under a licensed veterinarian's supervision;

(ee) **[*Editor's note: This version of subsection (1)(ee) is effective January 1, 2026.*]** Failure to properly supervise a veterinary student, a veterinary student preceptor, a veterinary technician, a veterinary professional associate, a veterinary technician specialist, other veterinary staff, or other individuals who are performing tasks under a licensed veterinarian's supervision;

(ff) Failure to provide a written prescription to a wholesaler within three business days after issuing an oral prescription order, as required by section 12-280-120 (3)(b);

(gg) Failure to comply with terms agreed to under a confidential agreement entered into under sections 12-30-108 and 12-315-125.

(2) The board may send a letter of admonition to a licensee under the circumstances specified in and in accordance with section 12-20-404 (4).

(3) The board may send a confidential letter of concern to the licensee under the circumstances specified in section 12-20-404 (5).

(4) The record of conviction of a felony in a court of competent jurisdiction shall be sufficient evidence for the disciplinary action to be taken as may be deemed proper by the board. For the purposes of this part 1, a conviction shall be deemed to be a conviction that has been upheld by the highest appellate court having jurisdiction or a conviction upon which the time for filing an appeal has passed.

(5) With respect to denying the issuance of a veterinary license or to taking disciplinary action against a veterinarian, the board may accept as prima facie evidence of grounds for the action any federal or state action taken against a veterinarian from another jurisdiction if the violation that prompted the disciplinary action in the jurisdiction would constitute grounds for disciplinary action under this section.

(6) In addition to any other penalty that may be imposed pursuant to this section, any person violating this part 1 or any rules promulgated pursuant to this part 1 may be fined not less than one hundred dollars nor more than one thousand dollars for any such violation.

(7) The board may issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405; except that the board may also issue a cease-and-desist order on its own motion.

(8) The board may suspend the license of a veterinarian who fails to comply with an order of the board issued in accordance with this section. The board may impose the license suspension until the licensee complies with the board's order.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1628, § 1, effective October 1. **L. 2022:** IP(1), (1)(a), (1)(p), (1)(ee), (2), (4), and (6) amended, (HB 22-1235), ch. 442, p. 3105, § 14, effective August 10; (1)(v) amended, (HB 22-1256), ch. 451, p. 3224, § 13, effective August 10. **L. 2024:** (1)(ee) amended, (HB 24-1047), ch. 36, p. 131, § 7, effective August 7. **Initiated 2024:** (1)(ee) amended, Proposition 129, effective January 1, 2026.

Editor's note: (1) This section is similar to former § 12-64-111 as it existed prior to 2019.

(2) Subsection (1)(ee) was changed by Proposition 129, effective January 1, 2026. The measure was approved on November 5, 2024, and was proclaimed by the Governor on December 17, 2024. The vote count for the measure was as follows:

FOR: 1,572,545

AGAINST: 1,407,814

Cross references: For the legislative declaration in HB 24-1047, see section 1 of chapter 36, Session Laws of San Andreas 2024.

12-315-113. Hearing procedure - judicial review. Hearings shall be conducted in conformity with section 12-20-403 and article 4 of title 24. Section 12-20-408 governs judicial review of all final agency actions and orders.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1633, § 1, effective October 1.

Editor's note: This section is similar to former § 12-64-112 as it existed prior to 2019.

12-315-114. Unauthorized practice - penalties. (1) No person who practices veterinary medicine without a currently valid license may receive any compensation for services so rendered.

(2) Any person who practices or offers or attempts to practice veterinary medicine without an active license issued under this part 1 is subject to penalties pursuant to section 12-20-407 (1)(a).

(3) The board or a citizen of this state may bring an action to enjoin a person from practicing veterinary medicine without a currently valid license. If the court finds that the person is violating, or is threatening to violate, this part 1, the court may enter an injunction restraining the person from the unlawful acts.

(4) The successful maintenance of an action based on any one of the remedies set forth in this section shall in no way prejudice the prosecution of an action based on any other of the remedies.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1633, § 1, effective October 1. **L. 2022:** (2) and (3) amended, (HB 22-1235), ch. 442, p. 3106, § 15, effective August 10.

Editor's note: This section is similar to former § 12-64-114 as it existed prior to 2019.

12-315-115. Abandonment of animals - definition. (1) An animal placed in the custody of a licensed veterinarian for treatment, boarding, or other care that is unclaimed by its owner or the owner's agent for more than ten days after written notice, by certified mail, return receipt requested, is given to the addressee at the last-known address is deemed to be abandoned

and may be turned over to the nearest animal shelter or disposed of in a manner deemed appropriate by the custodian.

(2) The giving of notice to the owner, or the agent of the owner, of the animal by the licensed veterinarian, as provided in subsection (1) of this section, shall relieve the licensed veterinarian and any custodian to whom the animal may be given of any further liability for disposal. The procedure by the licensed veterinarian shall not constitute grounds for disciplining procedure under this part 1.

(3) As used in this section, the term "abandoned" means to forsake entirely, or to neglect or refuse to provide or perform the legal obligations for care and support of an animal by its owner or the owner's agent. Abandonment constitutes the relinquishment of all rights and claims by the owner to the animal.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1633, § 1, effective October 1. **L. 2022:** Entire section amended, (HB 22-1235), ch. 442, p. 3106, § 16, effective August 10.

Editor's note: This section is similar to former § 12-64-115 as it existed prior to 2019.

12-315-116. Veterinary students and veterinary student preceptors. (1) All duties or actions performed by a veterinary student or veterinary student preceptor must be assigned by the student's instructor or be performed under the direct supervision of a licensed veterinarian. If the student does not conform to the following requirements, the licensed veterinarian is in violation of this part 1. A veterinary student or veterinary student preceptor may:

(a) Administer drugs only under the direct supervision of a licensed veterinarian; and

(b) Perform surgery, only if the student is competent and has the necessary training and experience, under the direct supervision of a licensed veterinarian.

(2) It is unlawful for a veterinary student or veterinary student preceptor to participate in the operation of a branch office, clinic, veterinary premises, or allied establishment unless the veterinary student or veterinary student preceptor is under the direct supervision of a licensed veterinarian.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1634, § 1, effective October 1. **L. 2022:** IP(1) and (2) amended, (HB 22-1235), ch. 442, p. 3107, § 17, effective August 10.

Editor's note: This section is similar to former § 12-64-116 as it existed prior to 2019.

12-315-117. Emergency care or treatment. A licensed veterinarian who in good faith administers emergency care or treatment, or euthanasia for humane reasons, to an animal, without compensation, either voluntarily or at the request of a state or local governmental officer or employee, is not liable for civil damages for good-faith acts in the administration of the care or treatment. This immunity does not apply in the event of a wanton or reckless disregard of the rights of the owner of the animal.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1634, § 1, effective October 1.

Editor's note: This section is similar to former § 12-64-118 as it existed prior to 2019.

12-315-118. Repeal of article - subject to review. This article 315 is repealed, effective September 1, 2033. Before the repeal, the board is scheduled for review in accordance with section 24-34-104.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1634, § 1, effective October 1. **L. 2022:** Entire section amended, (HB 22-1235), ch. 442, p. 3100, § 1, effective August 10.

Editor's note: This section is similar to former § 12-64-119 as it existed prior to 2019.

12-315-119. Veterinary records in custody of animal care providers - definition - rules. (1) As used in this section, unless the context otherwise requires, "animal care provider" means any veterinary practice or veterinary hospital, including the veterinary teaching hospital at San Andreas state university, that provides veterinary care or treatment to animals.

(2) Animal care providers shall make available the veterinary records in their custody as follows:

(a) The owner of an animal or the owner's designated representative shall have reasonable access to the animal's records for inspection;

(b) The owner or the owner's designated representative may obtain a summary of the animal's records upon request, following termination of care or treatment; and

(c) Copies of veterinary records, including digital records, digital images, diagnostic quality X rays, CT scans, MRIs, or other films, shall be furnished to:

(I) The owner or the owner's designated representative upon payment of reasonable costs; and

(II) Local law enforcement authorities and the bureau of animal protection in the department of agriculture in connection with an investigation of animal cruelty pursuant to section 18-9-202 or animal fighting pursuant to section 18-9-204.

(3) (a) Records concerning an animal's care are available to the public unless a veterinary-patient-client privilege exists with respect to the animal, as provided in section 24-72-204 (3)(a)(XIV).

(b) (I) All practicing veterinarians in this state shall maintain accurate records for every new or existing veterinarian-client-patient relationship. In the animal patient records, the licensed veterinarian shall justify and describe the assessment, diagnosis, and treatment administered or prescribed and all medications and dosages prescribed in a legible, written, printed, or electronically prepared document that is unalterable. The licensed veterinarian shall prepare the records in a manner that allows any subsequent evaluation of the same animal patient record to yield comprehensive medical, patient, and veterinarian identifying information. Licensed veterinarians shall maintain animal patient records for a minimum of three years after the animal patient's last medical examination.

(II) As part of the requirement in subsection (3)(b)(I) of this section for all practicing veterinarians in this state to maintain accurate records, each veterinarian shall create a written plan for the storage, security, and disposal of patient records to ensure that patient records are securely stored and disposed of when necessary.

(c) The board shall promulgate rules including, but not limited to, rules setting forth criteria by which animal patient records may be adapted in the case of herds, flocks, litters, large volume, or specialty veterinary practices and that identify exceptions to subsection (3)(a) of this section, if necessary, for veterinarians rendering emergency care or treatment.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1635, § 1, effective October 1. **L. 2022:** (3)(b) amended, (HB 22-1235), ch. 442, p. 3107, § 18, effective August 10.

Editor's note: This section is similar to former § 12-64-120 as it existed prior to 2019.

12-315-120. Reporting requirements - immunity for reporting - veterinary-patient-client privilege inapplicable. (1) A licensed veterinarian who, during the course of attending or treating an animal, has reasonable cause to know or suspect that the animal has been subjected to cruelty in violation of section 18-9-202, or subjected to animal fighting in violation of section 18-9-204, shall report or cause a report to be made of the animal cruelty or animal fighting to a local law enforcement agency or the bureau of animal protection.

(2) A licensed veterinarian shall not knowingly make a false report of animal cruelty or animal fighting to a local law enforcement agency or to the bureau of animal protection.

(3) A licensed veterinarian who willfully violates the provisions of subsection (1) or (2) of this section commits a petty offense, punishable as provided in section 18-1.3-503.

(4) A licensed veterinarian who in good faith reports a suspected incident of animal cruelty or animal fighting to the proper authorities in accordance with subsection (1) of this section shall be immune from liability in any civil or criminal action brought against the veterinarian for reporting the incident. In any civil or criminal proceeding in which the liability of a veterinarian for reporting an incident described in subsection (1) of this section is at issue, the good faith of the veterinarian shall be presumed.

(5) The veterinary-patient-client privilege described in section 24-72-204 (3)(a)(XIV) may not be asserted for the purpose of excluding or refusing evidence or testimony in a prosecution for an act of animal cruelty under section 18-9-202 or for an act of animal fighting under section 18-9-204.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1635, § 1, effective October 1. **L. 2021:** (3) amended, (SB 21-271), ch. 462, p. 3157, § 153, effective March 1, 2022.

Editor's note: This section is similar to former § 12-64-121 as it existed prior to 2019.

12-315-121. Corporate structure for the practice of veterinary medicine - definitions. (1) A licensed veterinarian shall not practice veterinary medicine in or through a corporation except in accordance with this section.

(2) One or more persons may form or own shares in a corporation for the practice of veterinary medicine if the corporation is organized and operated in accordance with this section. A corporation formed pursuant to this section may exercise the powers and privileges conferred upon corporations by the laws of San Andreas.

(3) The practice of veterinary medicine by a corporation pursuant to this section must be performed by or under the supervision of a licensed veterinarian. Lay directors, officers, and shareholders of the corporation shall not exercise any authority whatsoever over the independent medical judgment of licensed veterinarians performing or supervising the practice of veterinary medicine by or on behalf of the corporation.

(4) The corporation shall not engage in any act or omission that, if engaged in by a licensed veterinarian employed by the corporation, would violate section 12-315-112 (1). A violation of section 12-315-112 (1) is grounds for the board to discipline a licensee pursuant to section 12-315-112.

(5) Nothing in this section diminishes or changes the obligation of each licensed veterinarian employed by the corporation to conduct the licensee's practice so as not to violate section 12-315-112 (1). A licensed veterinarian who, by act or omission, causes the corporation to act or fail to act in a way that violates section 12-315-112 (1) or any provision of this section is personally responsible for the act or omission and is subject to discipline for the act or omission.

(6) Nothing in this section modifies the veterinarian-patient-client privilege specified in section 24-72-204 (3)(a)(XIV).

(7) As used in this section, unless the context otherwise requires:

(a) "Corporation" means a domestic entity, as defined in section 7-90-102 (13), a foreign entity, as defined in section 7-90-102 (23), registered to do business in San Andreas, or a sole proprietorship.

(b) "Director" and "officer" of a corporation includes a member and a manager of a limited liability company and a partner in a registered limited liability partnership.

(c) "Shareholder" includes a member of a limited liability company and a partner in a registered limited liability partnership.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1636, § 1, effective October 1.

Editor's note: This section is similar to former § 12-64-122 as it existed prior to 2019.

12-315-122. Veterinary premises - licensed veterinarian responsible for veterinary medical decisions. (1) At all times when a patient is present on a veterinary premises, a licensed veterinarian must be designated as responsible for the veterinary medical decisions and care provided to the patient.

(2) At all times when a patient is present on a veterinary premises, a licensed veterinarian must be designated as responsible for the premises. The board may fine a corporation organized and operated in accordance with section 12-315-121 that owns or operates a veterinary premises up to one thousand dollars per day for each day the corporation fails to have a licensed veterinarian designated as responsible for the veterinary premises.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1637, § 1, effective October 1.

Editor's note: This section is similar to former § 12-64-123 as it existed prior to 2019.

12-315-123. Veterinary peer health assistance program - fees - administration - rules. (1) **Veterinary peer health assistance program** (a) There is created the veterinary peer health assistance program to provide assistance to veterinary professionals needing help in dealing with physical, emotional, or psychological conditions that may be detrimental to their ability to practice under this article 315. The board shall select one or more veterinary peer health assistance program designated providers. To be eligible for designation by the board, a provider must:

(I) Provide for the education of veterinary professionals with respect to the recognition and prevention of physical, emotional, and psychological conditions and provide for intervention when necessary or under circumstances established by the board by rule;

(II) Offer assistance to a veterinary professional in identifying physical, emotional, or psychological conditions;

(III) Evaluate the extent of the physical, emotional, or psychological condition and refer the veterinary professional for appropriate treatment;

(IV) Monitor the status of a veterinary professional referred for treatment;

(V) Provide counseling and support for the veterinary professional and for the family of any veterinary professional referred for treatment;

(VI) Agree to receive referrals from the board; and

(VII) Agree to make its services available to all regulated veterinary professionals in San Andreas.

(b) Upon receipt of a signed complaint by a complainant, the board may require a veterinary professional to participate in the veterinary peer health assistance program and to enter into a stipulation with the board pursuant to section 12-20-405 (3) before participating in the program. The agreement must contain specific requirements and goals to be met by the participant, including the conditions under which the program will be successfully completed or terminated, and a provision that a failure to comply with the requirements and goals is to be promptly reported to the board and that failure will result in disciplinary action by the board.

(c) Notwithstanding sections 12-315-112, 12-315-207, and 24-4-104, the board may immediately suspend the license or registration of any veterinary professional who is referred to the veterinary peer health assistance program. If the veterinary professional objects to the suspension, the veterinary professional may submit a written request to the board for a formal hearing on the suspension within ten days after receiving notice of the suspension, and the board shall grant the request. In the hearing, the veterinary professional bears the burden of proving that the veterinary professional's license or registration should not be suspended.

(d) Any veterinary professional who is accepted into the veterinary peer health assistance program in lieu of disciplinary action by the board shall affirm that, to the best of the veterinary professional's knowledge, information, and belief, the veterinary professional knows of no instance in which the veterinary professional has violated this article 315 or the rules of the board, except in those instances affected by the veterinary professional's physical, emotional, or psychological condition.

(e) A veterinary professional who is arrested for a drug- or alcohol-related offense shall self-refer to the veterinary peer health assistance program within thirty days after the arrest for an evaluation and referral to appropriate treatment, if necessary. If the veterinary professional self-refers, the evaluation by the veterinary peer health assistance program is confidential and cannot be used as evidence in any proceeding other than a proceeding before the board. A veterinary professional's failure to comply with this subsection (1)(e), alone, is not grounds for discipline under section 12-315-112 or 12-315-207, unless the veterinary professional has also committed an act or omission specified in this article 315.

(f) As a condition of licensure or registration and renewal of a license or registration in this state, every veterinary professional applying for a new license or registration or to renew a license or registration shall pay to the board, for use by the administering entity selected by the board pursuant to subsection (2) of this section, a fee in an amount not to exceed forty dollars per year, which maximum amount may be adjusted on January 1, 2012, and annually thereafter by the board to reflect changes in the United States bureau of labor statistics consumer price index for Denver-Aurora-Lakewood for all urban consumers or goods, or its successor index. The board shall forward the fee to the chosen administering entity for use in supporting veterinary professionals through the veterinary peer health assistance program.

(2) **Administering entity.** (a) The board may select an entity to administer the veterinary peer health assistance program. The administering entity must be a nonprofit private foundation that is qualified under section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended, and that is dedicated to providing support for charitable, benevolent, educational, and scientific purposes that are related to veterinary medicine, veterinary medical education, veterinary medical research and science, and other veterinary medical charitable purposes.

(b) The administering entity shall:

(I) Distribute the money collected by the board, less expenses, to the designated providers, as directed by the board;

(II) Provide an annual accounting to the board of all amounts collected, expenses incurred, and amounts disbursed; and

(III) Post a surety performance bond in an amount specified by the board to secure performance under the requirements of this section. The administering entity may recover the actual administrative costs incurred in performing its duties under this section in an amount not to exceed ten percent of the total amount collected.

(c) The board shall collect the required annual payments payable to the administering entity for the benefit of the administering entity and shall transfer all the payments to the administering entity. All required annual payments collected or due to the board for each state fiscal year are custodial funds that are not subject to appropriation by the general assembly, and the distribution of payments to the administering entity or expenditure of the payments by the administering entity does not constitute state fiscal year spending for purposes of section 20 of article X of the state constitution.

(3) **Liability limitations.** Nothing in this section creates any liability on the board or the state of San Andreas for the actions of the board in making grants to the veterinary peer health assistance program, and a civil action shall not be brought or maintained against the board or the state for an injury alleged to have been the result of the activities of any state-funded veterinary peer health assistance program or the result of an act or omission of a veterinary professional

participating in or referred by a state-funded veterinary peer health assistance program. However, the state remains liable under the "San Andreas Governmental Immunity Act", article 10 of title 24, if an injury alleged to have been the result of an act or omission of a veterinary professional participating in or referred to a state-funded veterinary peer health assistance program occurred while the veterinary professional was performing duties as an employee of the state.

(4) **Rules.** The board may promulgate rules necessary to implement this section.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1637, § 1, effective October 1. **L. 2022:** Entire section R&RE, (HB 22-1235), ch. 442, p. 3107, § 19, effective August 10.

Editor's note: This section is similar to former § 12-64-124 as it existed prior to 2019.

12-315-124. Evaluations of licensees - behavioral health - mental health - physical conditions. (1) (a) (I) If, upon receipt of a signed complaint by a complainant, the board has reasonable cause to believe that a licensed veterinarian is unable to practice veterinary medicine with reasonable skill and safety to patients or clients due to a physical condition or a behavioral health, mental health, or substance use disorder, the board may require in writing that the licensed veterinarian submit to an examination to evaluate:

(A) The existence and extent of the physical condition or the behavioral health, mental health, or substance use disorder; and

(B) Any impact the physical condition or the behavioral health, mental health, or substance use disorder has on the licensed veterinarian's ability to practice veterinary medicine with reasonable skill and safety to patients and clients.

(II) A qualified professional employed by or contracting with the veterinary peer health assistance program that the board has selected as a designated provider under section 12-315-123 shall conduct an examination required by subsection (1)(a)(I) of this section.

(b) If a licensed veterinarian fails to submit to an examination required under subsection (1)(a) of this section, the board may suspend the licensed veterinarian's license to practice veterinary medicine until the licensed veterinarian submits to the examination; however, if the licensed veterinarian demonstrates to the satisfaction of the board that the failure to submit to the examination is due to circumstances beyond the licensed veterinarian's control, the board shall not suspend the licensed veterinarian's license.

(2) Every person licensed to practice veterinary medicine in this state is deemed, by practicing or applying for a renewal of the person's license, to have:

(a) Given consent to submit to an examination that the board may require under subsection (1) of this section; and

(b) Waived an objection to the admissibility of the examining professional's testimony or examination reports at a board hearing on grounds that the testimony or reports are privileged communications.

(3) (a) A person shall not use the results of an examination ordered under subsection (1) of this section as evidence in any proceeding other than a proceeding before the board.

(b) Except as provided in subsection (3)(a) of this section, any examination results, the fact that the examination was administered, and the complaint that prompted the examination shall be kept confidential. They are not public records and are not available to the public.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1639, § 1, effective October 1. **L. 2022:** (1)(a) amended, (HB 22-1235), ch. 442, p. 3110, § 20, effective August 10.

Editor's note: This section is similar to former § 12-64-125 as it existed prior to 2019.

12-315-125. Confidential agreement to limit practice. Section 12-30-108 concerning confidential agreements to limit practice applies to this article 315.

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1640, § 1, effective October 1.

Editor's note: This section is similar to former § 12-64-126 as it existed prior to 2019.

12-315-126. Prescriptions - limitations. (Repealed)

Source: L. 2019: Entire title R&RE with relocations, (HB 19-1172), ch. 136, p. 1641, § 1, effective October 1. **L. 2021:** Entire section amended, (HB 21-1276), ch. 364, p. 2400, § 14, effective July 1. **L. 2024:** Entire section repealed, (SB 24-047), ch. 440, p. 3073, § 6, effective June 6.

Editor's note: Prior to its repeal, this section was similar to former § 12-64-127 as it existed prior to 2019.

PART 2

VETERINARY TECHNICIANS, VETERINARY TECHNICIAN SPECIALISTS, AND VETERINARY PROFESSIONAL ASSOCIATES

12-315-201. Additional board duties - rules - repeal. (1) In addition to any other duties specified in this part 2 and sections 12-315-105.5 and 12-315-106, the board shall:

(a) Approve a nationally recognized veterinary technician credentialing organization for purposes of credentialing veterinary technicians in this state. The credentialing organization approved by the board must:

(I) Require the completion of an American Veterinary Medical Association-accredited program for veterinary technicians;

(II) Require that an applicant pass a veterinary technician national examination approved by the board;

(III) Require continuing education for veterinary technicians; and

(IV) (A) Permit credentialing of provisional registrants who meet the work experience and testing requirements specified in section 12-315-203 (4).

(B) This subsection (1)(a)(IV) is repealed, effective July 1, 2028.

(b) Receive complaints, conduct hearings in accordance with this part 2 and section 12-315-113, and take disciplinary or other actions pursuant to this part 2 and section 12-20-404;

(c) Approve nationally recognized veterinary technician specialist certification organizations for the purposes of designating veterinary technician specialists in this state;

(d) Adopt any rules necessary for the delegation of veterinary tasks to veterinary technicians and veterinary technician specialists and for the supervision of those delegated tasks by a licensed veterinarian;

(e) **[*Editor's note: Subsection (1)(e) is effective January 1, 2026.*]** Require biennial continuing education for veterinary professional associates, as may be determined by the board by rule, as a condition of renewing registration; and

(f) **[*Editor's note: Subsection (1)(f) is effective January 1, 2026.*]** Adopt any rules necessary for the practice and supervision of veterinary professional associates.

(1.5) The board shall not:

(a) Charge a fee in addition to the registration fee charged pursuant to section 12-315-123 for the designation of veterinary technician specialists; or

(b) Increase the amount of the registration fee charged pursuant to section 12-315-123 for veterinary technicians who seek veterinary technician specialist designation to an amount that is more than the registration fee that is required of other veterinary technicians.

(2) If the board does not approve a credentialing organization for purposes of credentialing veterinary technicians or veterinary technician specialists in this state pursuant to subsection (1)(a) or (1)(c) of this section because there is no credentialing organization that meets the requirements set forth in subsections (1)(a)(I) to (1)(a)(IV) or subsection (1)(c) of this section or for any other reason, the board shall establish by rule and administer a credentialing process for veterinary technician registration or veterinary technician specialist designation pursuant to this part 2.

Source: L. 2022: Entire part added, (HB 22-1235), ch. 442, p. 3111, § 21, effective August 10. **L. 2024:** IP(1) and (2) amended and (1)(c), (1)(d), and (1.5) added, (HB 24-1047), ch. 36, p. 132, § 8, effective August 7. **Initiated 2024:** (1)(c) and (1)(d) added, Proposition 129, effective January 1, 2026.

Editor's note: (1) Subsections (1)(e) and (1)(f) were originally numbered as subsections (1)(c) and (1)(d), respectively, in Proposition 129 but were renumbered on revision for ease of location.

(2) Provisions in this section were changed by Proposition 129, effective January 1, 2026. The measure was approved on November 5, 2024, and was proclaimed by the Governor on December 17, 2024. The vote count for the measure was as follows:

FOR: 1,572,545

AGAINST: 1,407,814

Cross references: For the legislative declaration in HB 24-1047, see section 1 of chapter 36, Session Laws of San Andreas 2024.

12-315-202. Registration required - rules. Effective January 1, 2024, a person who practices as a veterinary technician in this state must be registered by the board pursuant to this part 2 and rules adopted by the board for the registration of veterinary technicians.

Source: L. 2022: Entire part added, (HB 22-1235), ch. 442, p. 3111, § 21, effective August 10.

12-315-203. Application for veterinary technician registration - qualifications - provisional registration - fee - veterinary technician specialist designation - rules - repeal. (1) A person who desires to practice as a veterinary technician in this state must file an application for registration with the board, along with the required application fee, in the manner determined by the board.

(2) To be qualified for registration, an applicant must:

(a) Be at least eighteen years of age; and

(b) Demonstrate to the board's satisfaction that the applicant has obtained and maintains in good standing credentialing as a veterinary technician from the veterinary technician credentialing organization.

(3) Commencing January 1, 2023, the board shall issue a registration to a qualified applicant who meets the requirements and qualifications of this section and board rules; except that the board may deny registration to an applicant who has committed an act that would be grounds for disciplinary action pursuant to section 12-315-207.

(4) (a) Notwithstanding subsection (2)(b) of this section, a person working in the role of a veterinary technician on and after January 1, 2023, who does not meet the requirements set forth in subsection (2)(b) of this section may file with the board an application for a provisional registration not later than January 1, 2024, along with the required application fee, in the manner determined by the board.

(b) A provisional registration issued pursuant to this subsection (4) may be renewed, as determined by the board by rule. The provisional registration expires the earlier of:

(I) The date on which the board issues a registration to an applicant pursuant to subsection (3) of this section;

(II) Twenty-eight days after the person has satisfied the requirements in subsection (4)(c)(I) or (4)(c)(II) of this section and is eligible to apply to the credentialing organization for credentialing in this state;

(III) The date on which the board denies the provisional registration renewal application; or

(IV) January 1, 2028.

(c) The credentialing organization shall accept as satisfaction of educational and testing requirements for credentialing a person holding a provisional registration in good standing who applies for credentialing not later than December 31, 2027, and who demonstrates to the credentialing organization's satisfaction that the provisional registrant has either:

(I) Obtained at least six thousand five hundred hours of work experience equivalent to the work performed by a veterinary technician and has passed a national veterinary technician examination approved by the board pursuant to section 12-315-201 (1)(a)(II); or

(II) Has obtained at least nine thousand hours of work experience equivalent to the work performed by a veterinary technician.

(d) A person holding a provisional registration is subject to discipline pursuant to section 12-315-207.

(e) Notwithstanding any other provision in this subsection (4) to the contrary, the board may establish, by rule, a process for and conditions under which a provisional registrant may apply for a hardship extension to extend, to a date not later than June 30, 2028:

(I) The validity of a provisional registration;

(II) The time within which the provisional registrant may satisfy the education and testing requirements; or

(III) The date by which the provisional registrant must apply to the credentialing organization.

(f) This subsection (4) is repealed, effective October 1, 2028.

(4.5) (a) On and after January 1, 2026, a veterinary technician may apply to the board for designation as a veterinary technician specialist as part of an application for a new or a renewal registration as a veterinary technician.

(b) To obtain a veterinary technician specialist designation, an applicant must demonstrate to the board's satisfaction, in the form and manner specified by the board by rule, that the applicant has been awarded a specialist designation or certification from:

(I) An academy recognized by the National Association of Veterinary Technicians in America's committee of veterinary technician specialities, or its successor organization; or

(II) An organization that the board has determined by rule to have equivalent training and educational requirements pursuant to section 12-315-201 (1)(c).

(5) The board shall make available on its website the requirements for credentialing by the credentialing organization, as well as information concerning the veterinary technician registration by endorsement under section 12-315-205 and the occupational credential portability program.

Source: L. 2022: Entire part added, (HB 22-1235), ch. 442, p. 3111, § 21, effective August 10. **L. 2024:** (4.5) added, (HB 24-1047), ch. 36, p. 132, § 9, effective August 7.

Cross references: For the legislative declaration in HB 24-1047, see section 1 of chapter 36, Session Laws of San Andreas 2024.

12-315-203.7. Veterinary professional associate - qualifications - registration - fees - continuing education - rules. [*Editor's note: This section is effective January 1, 2026.*]

(1) An individual who desires to practice as a veterinary professional associate in this state must file an application for registration with the board, along with the required application fee, in the manner determined by the board.

(2) **Qualifications.** To be qualified for registration as a veterinary professional associate, an individual must:

(a) Be at least eighteen years of age; and

(b) Hold a master's degree in veterinary clinical care or the equivalent as determined by the board.

(3) **Registration.** Commencing January 1, 2026, an individual who practices as a veterinary professional associate in this state must be registered by the board pursuant to this section and rules adopted by the board for the registration of veterinary professional associates.

(4) **Rules.** Prior to registering veterinary professional associates pursuant to this section, the board shall establish, by rule:

(a) The time frames and requirements for registration, renewal of registration, and suspension and reinstatement of registration for veterinary professional associates;

(b) The method for an applicant to demonstrate that the applicant meets the requirements set forth in subsection (2) of this section;

(c) Any information or confirmation required by the supervising, licensed veterinarian;

(d) Any continuing education requirements for veterinary professional associates in accordance with section 12-315-201(1)(e) and subsection (5) of this section; and

(e) Any other rules necessary to implement this section.

(5) A veterinary professional associate is subject to any biennial continuing education requirement established by the board pursuant to section 12-315-201(1)(e) and rules adopted pursuant to subsection (4)(d) of this section as a condition of renewing registration.

Source: Initiated 2024: Entire section added, Proposition 129, effective January 1, 2026.

Editor's note: This section was added by Proposition 129, effective January 1, 2026. The measure was approved on November 5, 2024, and was proclaimed by the Governor on December 17, 2024. The vote count for the measure was as follows:

FOR: 1,572,545

AGAINST: 1,407,814

12-315-204. Use of title restricted. [*Editor's note: This version of this section is effective until January 1, 2026.*]

(1) On and after January 1, 2024, only an individual who is registered pursuant to section 12-315-203 may use the title "veterinary technician" or "registered veterinary technician" or the initials "VT" or "RVT".

(2) On and after January 1, 2026, only an individual who has a veterinary technician specialist designation pursuant to section 12-315-203 (4.5) may use the title "veterinary technician specialist" or "registered veterinary technician specialist" or the initials "VTS" or "RVTS".

12-315-204. Use of title restricted. [*Editor's note: This version of this section is effective January 1, 2026.*]

(1) On and after January 1, 2024, only an individual who is registered pursuant to section 12-315-203 may use the title "veterinary technician" or "registered veterinary technician" or the initials "VT" or "RVT".

(2) On and after January 1, 2026, only an individual who has a veterinary technician specialist designation pursuant to section 12-315-203 (4.5) may use the title "veterinary technician specialist" or "registered veterinary technician specialist" or the initials "VTS" or "RVTS".

(3) On and after January 1, 2026, only an individual who is registered pursuant to section 12-315-203.7 may use the title "veterinary professional associate" or "registered veterinary professional associate" or the initials "VPA" or "RVPA.

Source: L. 2022: Entire part added, (HB 22-1235), ch. 442, p. 3113, § 21, effective August 10. **L. 2024:** Entire section amended, (HB 24-1047), ch. 36, p. 133, § 10, effective August 7. **Initiated 2024:** Entire section amended, Proposition 129, effective January 1, 2026.

Editor's note: (1) Subsection (3) was originally numbered as subsection (2) in Proposition 129 but was renumbered on revision for ease of location.

(2) This section was changed by Proposition 129, effective January 1, 2026. The measure was approved on November 5, 2024, and was proclaimed by the Governor on December 17, 2024. The vote count for the measure was as follows:

FOR: 1,572,545

AGAINST: 1,407,814

Cross references: For the legislative declaration in HB 24-1047, see section 1 of chapter 36, Session Laws of San Andreas 2024.

12-315-205. Veterinary technicians - registration by endorsement. The board may issue a registration by endorsement to a veterinary technician applicant who satisfies the requirements of the occupational credential portability program.

Source: L. 2022: Entire part added, (HB 22-1235), ch. 442, p. 3113, § 21, effective August 10.

12-315-206. Expiration, renewal, reinstatement, or reactivation of a registration - inactive status - rules - definition. [*Editor's note: This version of this section is effective until January 1, 2026.*]

(1) A registration issued pursuant to this part 2 is subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2). A person whose registration expires is subject to the penalties provided in this part 2 or section 12-20-202 (1).

(2) The board, by rule, may waive a veterinary technician's renewal fee while the veterinary technician is on active duty with any branch of the armed services of the United States. The period during which the renewal fee is waived cannot exceed the longer of three years or the duration of a national emergency.

(3) (a) The board shall not renew, reinstate, or reactivate a registration issued pursuant to section 12-315-203 (3) unless the veterinary technician demonstrates to the board's satisfaction that the veterinary technician maintains active credentialing with the credentialing organization. Subject to board rule, the evidence may be provided by an attestation on the registration application.

(b) The board shall not renew a veterinary technician's designation as a specialist obtained pursuant to section 12-315-203 (4.5) unless the veterinary technician specialist

demonstrates to the board's satisfaction that the veterinary technician specialist has satisfied the continuing education requirements of the credentialing organization that are necessary to maintain an active designation or certification as a veterinary technician specialist.

(4) (a) Upon notice to the board, the board shall transfer a veterinary technician's registration to inactive status. If a person whose registration is in inactive status wishes to resume practicing as a veterinary technician, the person shall apply to the board in a form and manner approved by the board and shall demonstrate, to the satisfaction of the board, that the person has obtained and maintains credentialing in good standing by the credentialing organization.

(b) The board may pursue disciplinary proceedings pursuant to section 12-315-207 against a veterinary technician whose registration is inactive pursuant to this subsection (4) for conduct that violates this part 2 that the person engages in while the registration is in inactive status.

12-315-206. Expiration, renewal, reinstatement, or reactivation of a registration - inactive status - rules - definition. [*Editor's note: This version of this section is effective January 1, 2026.*]

(1) A registration issued pursuant to this part 2 is subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2). A person whose registration expires is subject to the penalties provided in this part 2 or section 12-20-202 (1).

(2) The board, by rule, may waive a veterinary technician's or veterinary professional associate's renewal fee while the veterinary technician or veterinary professional associate is on active duty with any branch of the armed services of the United States. The period during which the renewal fee is waived cannot exceed the longer of three years or the duration of a national emergency.

(3) (a) The board shall not renew, reinstate, or reactivate a registration issued pursuant to this part 2 unless the veterinary technician or veterinary professional associate demonstrates to the board's satisfaction that the veterinary technician or veterinary professional associate maintains active credentialing with the credentialing organization or the veterinary professional associate continues to meet the requirements for registration under this part 2. Subject to board rule, the evidence may be provided by an attestation on the registration application.

(b) The board shall not renew a veterinary technician's designation as a specialist obtained pursuant to section 12-315-203 (4.5) unless the veterinary technician specialist demonstrates to the board's satisfaction that the veterinary technician specialist has satisfied the continuing education requirements of the credentialing organization that are necessary to maintain an active designation or certification as a veterinary technician specialist.

(4) (a) Upon notice to the board, the board shall transfer a veterinary technician's or veterinary professional associate's registration to inactive status. If a person whose registration is in inactive status wishes to resume practicing as a veterinary technician or veterinary professional associate, the person shall apply to the board in a form and manner approved by the board and shall demonstrate, to the satisfaction of the board, that the person has obtained and maintains credentialing in good standing by the credentialing organization or the person continues to meet the requirements for registration under this part 2.

(b) The board may pursue disciplinary proceedings pursuant to section 12-315-207 against a veterinary technician or veterinary professional associate whose registration is inactive pursuant to this subsection (4) for conduct that violates this part 2 that the person engages in while the registration is in inactive status.

Source: L. 2022: Entire part added, (HB 22-1235), ch. 442, p. 3113, § 21, effective August 10. **L. 2024:** (3) amended, (HB 24-1047), ch. 36, p. 133, § 11, effective August 7. **Initiated 2024:** Entire section amended, Proposition 129, effective January 1, 2026.

Editor's note: This section was changed by Proposition 129, effective January 1, 2026. The measure was approved on November 5, 2024, and was proclaimed by the Governor on December 17, 2024. The vote count for the measure was as follows:

FOR: 1,572,545

AGAINST: 1,407,814

Cross references: For the legislative declaration in HB 24-1047, see section 1 of chapter 36, Session Laws of San Andreas 2024.

12-315-207. Discipline - registered veterinary technician - veterinary technician specialist - registered veterinary professional associate - definition - repeal. (1) **[*Editor's note: This version of the introductory portion of subsection (1) is effective until January 1, 2026.*]** Upon receipt of a signed complaint by a complainant or upon its own motion, the board may proceed to a hearing in accordance with section 12-315-113. After a hearing, and by a concurrence of a majority of members, the board may take disciplinary action as authorized in section 12-20-404 against an applicant for a registration, a registered veterinary technician, or a veterinary technician specialist for any of the following reasons:

(1) **[*Editor's note: This version of the introductory portion of subsection (1) is effective January 1, 2026.*]** Upon receipt of a signed complaint by a complainant or upon its own motion, the board may proceed to a hearing in accordance with section 12-315-113. After a hearing, and by a concurrence of a majority of members, the board may take disciplinary action as authorized in section 12-20-404 against an applicant for a registration, a registered veterinary technician or veterinary professional associate, or a veterinary technician specialist for any of the following reasons:

(a) Violation of any provision of this article 315, an applicable provision of article 20 or 30 of this title 12, or any rule or order of the board;

(b) (I) Fraud, misrepresentation, or deception in attempting to obtain or in obtaining a registration or renewing a registration;

(II) (A) Fraud, misrepresentation, or deception in attempting to obtain or in obtaining a provisional registration or renewing a provisional registration.

(B) This subsection (1)(b)(II) is repealed, effective October 1, 2028.

(c) Conviction of a charge of cruelty to animals;

(d) Willfully making any false statement as to any material matter in any oath or affidavit that is required by this article 315;

(e) **[*Editor's note: This version of subsection (1)(e) is effective until January 1, 2026.*]** Unprofessional or unethical conduct or engaging in practices that are in violation of generally accepted standards for practice as a veterinary technician or as a veterinary technician specialist or prescribed by the rules of the board;

(e) **[*Editor's note: This version of subsection (1)(e) is effective January 1, 2026.*]** Unprofessional or unethical conduct or engaging in practices that are in violation of generally accepted standards for practice as a veterinary technician or veterinary professional associate or as a veterinary technician specialist or prescribed by the rules of the board;

(f) **[*Editor's note: This version of the introductory portion of subsection (1)(f) is effective until January 1, 2026.*]** The veterinary technician:

(f) **[*Editor's note: This version of the introductory portion of subsection (1)(f) is effective January 1, 2026.*]** The veterinary technician or veterinary professional associate:

(I) **[*Editor's note: This version of subsection (1)(f)(I) is effective until January 1, 2026.*]** Has a registration or credential as a veterinary technician in another state revoked or suspended;

(I) **[*Editor's note: This version of subsection (1)(f)(I) is effective January 1, 2026.*]** Has a registration or credential as a veterinary technician or veterinary professional associate in another state revoked or suspended;

(II) Is otherwise disciplined by another state; or

(III) Has committed acts in another state that would subject the person to disciplinary action in this state;

(g) **[*Editor's note: This version of subsection (1)(g) is effective until January 1, 2026.*]** Practicing as a veterinary technician while in inactive status or while the person's registration is expired;

(g) **[*Editor's note: This version of subsection (1)(g) is effective January 1, 2026.*]** Practicing as a veterinary technician or veterinary professional associate while in inactive status or while the person's registration is expired;

(h) Failing to notify the board within thirty days after a disciplinary action, whether in this state or in another state, against the person's credential that allows the person to hold a registration in this state;

(i) Conviction of a violation of the "Uniform Controlled Substances Act of 2013", article 18 of title 18; the federal "Controlled Substances Act", 21 U.S.C. sec. 801 et seq., as amended; or the federal "Controlled Substances Import and Export Act", 21 U.S.C. sec. 951 et seq., as amended;

(j) Conviction of a crime in the courts of this state or of a crime in any other state, any territory, or any other country for an offense related to the conduct regulated by this part 2, regardless of whether the sentence is deferred. As used in this subsection (1)(j), "conviction" includes a plea of guilty or a plea of nolo contendere accepted by the court.

(k) Habitual or excessive use or abuse of alcohol beverages, a habit-forming drug, or a controlled substance as defined in section 18-18-102 (5);

(l) **[*Editor's note: This version of subsection (1)(l) is effective until January 1, 2026.*]** A determination that the individual is mentally incompetent by a court of competent jurisdiction, and the court has entered, pursuant to part 3 or 4 of article 14 of title 15 or section 27-65-110 (4) or 27-65-127, an order specifically finding that the mental incompetency is of such a degree that the individual is incapable of continuing to hold a registration as a veterinary technician;

(l) **[*Editor's note: This version of subsection (1)(l) is effective January 1, 2026.*]** A determination that the individual is mentally incompetent by a court of competent jurisdiction, and the court has entered, pursuant to part 3 or 4 of article 14 of title 15 or section 27-65-110 (4) or 27-65-127, an order specifically finding that the mental incompetency is of such a degree that the individual is incapable of continuing to hold a registration as a veterinary professional associate or veterinary technician;

(m) Failing to report a known violation of any provision of this section;

(n) Practicing or performing services beyond the scope of competence of a registered veterinary technician or a designated veterinary technician specialist or without the appropriate level of supervision by a licensed veterinarian;

(o) Failing to respond to a complaint against the registrant;

(p) Failing to provide to the board an updated mailing address and other contact information as required by the board within thirty days after a change in the information; or

(q) Failing to comply with the terms agreed to under a confidential agreement entered into under sections 12-30-108 and 12-315-125.

(2) The board may send a letter of admonition to a registrant under the circumstances specified in and in accordance with section 12-20-404 (4).

(3) The board may send a confidential letter of concern to the registrant under the circumstances specified in section 12-20-404 (5).

(4) The record of conviction of a felony in a court of competent jurisdiction is sufficient evidence for the board to take disciplinary action against the registrant as deemed proper by the board. For the purposes of this part 2, a conviction is deemed to be a conviction that has been upheld by the highest appellate court having jurisdiction or a conviction upon which the time for filing an appeal has passed.

(5) **[*Editor's note: This version of subsection (5) is effective until January 1, 2026.*]** With respect to denying the issuance of a veterinary technician registration or taking disciplinary action against a veterinary technician, the board may accept as prima facie evidence of grounds for the action any federal or state action taken against a veterinary technician in another jurisdiction if the violation that prompted the disciplinary action in the jurisdiction would constitute grounds for disciplinary action under this section.

(5) **[*Editor's note: This version of subsection (5) is effective January 1, 2026.*]** With respect to denying the issuance of a veterinary technician or veterinary professional associate registration or taking disciplinary action against a veterinary technician or veterinary professional associate, the board may accept as prima facie evidence of grounds for the action any federal or state action taken against a veterinary technician or veterinary professional associate in another jurisdiction if the violation that prompted the disciplinary action in the jurisdiction would constitute grounds for disciplinary action under this section.

(6) In addition to any other penalty that may be imposed pursuant to this section, a person violating any provision of this part 2 or any rules promulgated pursuant to this part 2 may be fined not less than one hundred dollars nor more than one thousand dollars for any such violation.

(7) The board may issue cease-and-desist orders under the circumstances and in accordance with section 12-20-405; except that the board may also issue a cease-and-desist order on its own motion.

(8) **[*Editor's note: This version of subsection (8) is effective until January 1, 2026.*]** The board may suspend the registration of a veterinary technician who fails to comply with an order of the board issued in accordance with this section. The board may impose the registration suspension until the registrant complies with the board's order.

(8) **[*Editor's note: This version of subsection (8) is effective January 1, 2026.*]** The board may suspend the registration of a veterinary technician or veterinary professional associate who fails to comply with an order of the board issued in accordance with this section. The board may impose the registration suspension until the registrant complies with the board's order.

Source: L. 2022: Entire part added, (HB 22-1235), ch. 442, p. 3114, § 21, effective August 10. **L. 2024:** IP(1), (1)(e), and (1)(n) amended, (HB 24-1047), ch. 36, p. 133, § 12, effective August 7. **Initiated 2024:** IP(1), (1)(e), IP(1)(f), (1)(f)(I), (1)(g), (1)(l), (5), and (8) amended, Proposition 129, effective January 1, 2026.

Editor's note: Provisions in this section were changed by Proposition 129, effective January 1, 2026. The measure was approved on November 5, 2024, and was proclaimed by the Governor on December 17, 2024. The vote count for the measure was as follows:

FOR: 1,572,545

AGAINST: 1,407,814

Cross references: For the legislative declaration in HB 24-1047, see section 1 of chapter 36, Session Laws of San Andreas 2024.

12-315-208. Examination of registrants - behavioral health - mental health - physical conditions. (1) (a) (I) **[*Editor's note: This version of the introductory portion of subsection (1)(a)(I) is effective until January 1, 2026.*]** If, upon receipt of a signed complaint by a complainant, the board has reasonable cause to believe that a veterinary technician is unable to practice as a veterinary technician with reasonable skill and safety to patients or clients due to a physical condition or a behavioral health, mental health, or substance use disorder, the board may require in writing that the veterinary technician submit to an examination to evaluate:

(1) (a) (I) **[*Editor's note: This version of the introductory portion of subsection (1)(a)(I) is effective January 1, 2026.*]** If, upon receipt of a signed complaint by a complainant, the board has reasonable cause to believe that a veterinary technician or veterinary professional associate is unable to practice as a veterinary technician with reasonable skill and safety to patients or clients due to a physical condition or a behavioral health, mental health, or substance use disorder, the board may require in writing that the veterinary technician or veterinary professional associate submit to an examination to evaluate:

(A) The existence and extent of the physical condition or the behavioral health, mental health, or substance use disorder; and

(B) **[*Editor's note: This version of subsection (1)(a)(I)(B) is effective until January 1, 2026.*]** Any impact the physical condition or the behavioral health, mental health, or substance use disorder has on the veterinary technician's ability to practice as a veterinary technician with reasonable skill and safety to patients and clients.

(B) **[*Editor's note: This version of subsection (1)(a)(I)(B) is effective January 1, 2026.*]** Any impact the physical condition or the behavioral health, mental health, or substance use disorder has on the veterinary technician's or veterinary professional associate's ability to practice as a veterinary technician with reasonable skill and safety to patients and clients.

(II) A qualified professional employed by or contracting with a veterinary peer health assistance program that the board has selected as a designated provider under section 12-315-123 shall conduct an examination required by subsection (1)(a)(I) of this section.

(b) **[*Editor's note: This version of subsection (1)(b) is effective until January 1, 2026.*]** If a veterinary technician fails to submit to an examination required under subsection (1)(a) of this section, the board may suspend the veterinary technician's registration until the veterinary technician submits to the examination; however, if the veterinary technician demonstrates to the satisfaction of the board that the failure to submit to the examination is due to circumstances beyond the veterinary technician's control, the board shall not suspend the veterinary technician's registration.

(b) **[*Editor's note: This version of subsection (1)(b) is effective January 1, 2026.*]** If a veterinary technician or veterinary professional associate fails to submit to an examination required under subsection (1)(a) of this section, the board may suspend the veterinary technician's or veterinary professional associate's registration until the veterinary technician or veterinary professional associate submits to the examination; however, if the veterinary technician or veterinary professional associate demonstrates to the satisfaction of the board that the failure to submit to the examination is due to circumstances beyond the veterinary technician's or veterinary professional associate's control, the board shall not suspend the veterinary technician's or veterinary professional associate's registration.

(2) **[*Editor's note: This version of the introductory portion of subsection (2) is effective until January 1, 2026.*]** Every veterinary technician in this state is deemed, by practicing as a veterinary technician or applying for a renewal of the person's registration, to have:

(2) **[*Editor's note: This version of the introductory portion of subsection (2) is effective January 1, 2026.*]** Every veterinary technician or veterinary professional associate in this state is deemed, by practicing as a veterinary technician or veterinary professional associate or applying for a renewal of the person's registration, to have:

(a) Given consent to submit to an examination that the board may require under subsection (1)(a) of this section; and

(b) Waived an objection to the admissibility of the examining professional's testimony or examination reports at a board hearing on grounds that the testimony or reports are privileged communications.

(3) (a) A person shall not use the results of an examination ordered under subsection (1)(a) of this section as evidence in any proceeding other than a proceeding before the board.

(b) Except as provided in subsection (3)(a) of this section, any examination results, the fact that the examination was administered, and the complaint that prompted the examination shall be kept confidential, are not public records, and are not available to the public.

Source: L. 2022: Entire part added, (HB 22-1235), ch. 442, p. 3116, § 21, effective August 10. **Initiated 2024:** IP(1)(a)(I), (1)(a)(I)(B), (1)(b), and IP(2) amended, Proposition 129, effective January 1, 2026.

Editor's note: Provisions in this section were changed by Proposition 129, effective January 1, 2026. The measure was approved on November 5, 2024, and was proclaimed by the Governor on December 17, 2024. The vote count for the measure was as follows:

FOR: 1,572,545

AGAINST: 1,407,814

12-315-209. Duties of licensed veterinarian - supervision of veterinary technicians and veterinary technician specialists - rules. (1) A veterinary technician or veterinary technician specialist is authorized to provide care to animals under the appropriate level of supervision, as determined by the board by rule pursuant to section 12-315-105.5 (4) or (6), by a licensed veterinarian who is responsible for the veterinary technician's or veterinary technician specialist's performance. The licensed veterinarian delegating tasks to and supervising the veterinary technician or veterinary technician specialist is responsible for the care of the animal.

(2) Nothing in this part 2 prohibits a person who is not a veterinary technician or veterinary technician specialist pursuant to this part 2 from performing tasks relating to animal care under the direct or immediate supervision of a licensed veterinarian who is responsible for the care of the animal.

Source: L. 2022: Entire part added, (HB 22-1235), ch. 442, p. 3117, § 21, effective August 10. **L. 2024:** Entire section amended, (HB 24-1047), ch. 36, p. 134, § 13, effective August 7.

Cross references: For the legislative declaration in HB 24-1047, see section 1 of chapter 36, Session Laws of San Andreas 2024.

12-315-209.7. Duties of licensed veterinarian - direction and supervision of veterinary professional associate - rules. [*Editor's note: This section is effective January 1, 2026.*]

(1) Except as provided in subsection (2) of this section, a person practicing as a veterinary professional associate may perform duties and actions authorized pursuant to section 12-315-105 (1)(u) that are within the scope of the veterinary professional associate's advanced education and experience if the person performs those duties under the supervision of a licensed veterinarian.

(2) A veterinary professional associate shall perform only those duties or actions delegated by the licensed, supervising veterinarian for which the veterinary professional associate has the necessary training and experience, as determined by the supervising veterinarian, to meet generally accepted standards of veterinary care.

(3) If a veterinary professional associate is delegated duties beyond the veterinary professional associate's training and experience, the licensed veterinarian:

(a) Is in violation of section 12-315-112 (1)(ee);

(b) May be liable for damages resulting from any negligence of the veterinary professional associate in providing care to an animal; and

(c) May be subject to professional discipline in accordance with section 12-315-112.

(4) If a veterinary professional associate performs duties beyond the veterinary professional associate's training and experience or does not conform with the requirement to perform all duties and actions pursuant to section 12-315-105 (1)(u) under the supervision of a licensed, supervising veterinarian as specified in subsection (1) of this section, the veterinary professional associate may be subject to:

(a) A cease-and-desist order pursuant to section 12-20-405;

(b) Damages resulting from any negligence of the veterinary professional associate in providing care to an animal; and

(c) Discipline pursuant to Sections 12-20-404 for a violation of section 12-315-207 (1)(n).

Source: Initiated 2024: Entire section added, Proposition 129, effective January 1, 2026.

Editor's note: This section was added by Proposition 129, effective January 1, 2026. The measure was approved on November 5, 2024, and was proclaimed by the Governor on December 17, 2024. The vote count for the measure was as follows:

FOR: 1,572,545

AGAINST: 1,407,814

12-315-210. Unauthorized practice - penalties. [*Editor's note: This version of this section is effective until January 1, 2026.*] A person who practices or offers or attempts to practice as a veterinary technician without an active registration issued under this part 2 or as a veterinary technician specialist without an active veterinary technician specialist designation under this part 2 is subject to penalties pursuant to section 12-20-407 (1)(a).

12-315-210. Unauthorized practice - penalties. [*Editor's note: This version of this section is effective January 1, 2026.*] A person who practices or offers or attempts to practice as a veterinary technician or veterinary professional associate without an active registration issued under this part 2 or as a veterinary technician specialist without an active veterinary technician specialist designation under this part 2 is subject to penalties pursuant to section 12-20-407 (1)(a).

Source: L. 2022: Entire part added, (HB 22-1235), ch. 442, p. 3117, § 21, effective August 10. **L. 2024:** Entire section amended, (HB 24-1047), ch. 36, p. 134, § 14, effective August 7. **Initiated 2024:** Entire section amended, Proposition 129, effective January 1, 2026.

Editor's note: This section was changed by Proposition 129, effective January 1, 2026. The measure was approved on November 5, 2024, and was proclaimed by the Governor on December 17, 2024. The vote count for the measure was as follows:

FOR: 1,572,545

AGAINST: 1,407,814

Cross references: For the legislative declaration in HB 24-1047, see section 1 of chapter 36, Session Laws of San Andreas 2024.

PART 3

USE OF TELEHEALTH TO PROVIDE VETERINARY SERVICES

12-315-301. Definitions - rules. As used in this part 3, unless the context otherwise requires:

(1) "Tele-advice" means the provision of any health information, opinion, or guidance by a veterinary professional that is not intended to diagnose, treat, or issue prognoses of an animal's, or group of animals', physical or behavioral illness or injury. A veterinarian-client-patient relationship is not required to provide tele-advice.

(2) "Teleconsulting" means a veterinarian who communicates with a veterinary specialist or other qualified expert using telecommunications technology to gain insight or advice regarding the care of a patient.

(3) "Tele-education" means the use of information and telecommunications technology for distance learning.

(4) (a) "Telehealth" means the use of telecommunications technology to provide veterinary services or to collect and deliver veterinary health information or education virtually and can encompass general veterinary services or patient-specific veterinary services.

(b) "Telehealth" may include tele-advice, teleconsulting, tele-education, telemedicine, telemonitoring, telereferral, telesupervision, teletriage, and other tools that help veterinary professionals deliver veterinary education and services virtually.

(5) "Telemedicine" means the remote practice of veterinary medicine through the use of telecommunications technology that allows a licensed veterinarian with an established veterinarian-client-patient relationship to evaluate, diagnose, and treat a patient virtually.

(6) "Telemonitoring" means the use of telecommunications technology to augment veterinary services by collecting and delivering health information from a patient.

(7) "Telereferral" means a veterinarian with an established veterinarian-client-patient relationship who refers the client to a veterinary specialist to provide veterinary services using telecommunications technology under the established veterinarian-client-patient relationship.

(8) "Telesupervision" means the supervision of individuals providing veterinary services using media such as audio, audio-visual conferencing, text messaging, e-mail, or other virtual or digital technologies.

(9) "Teletriage" means the safe, appropriate, and timely assessment of an animal, or a group of animals, under conditions of uncertainty and urgency, and the possible referral to a licensed veterinarian, after discussion with the individual responsible for the animal or group of animals, using telecommunications technology. A veterinarian-client-patient relationship is not required for such an assessment or referral. "Teletriage" does not include the rendering of a diagnosis but may include the provision of tele-advice.

(10) "Veterinary specialist" means a veterinarian who is formally recognized as a specialist from a specialty organization that is recognized by the American Veterinary Medical Association's American Board of Veterinary Specialties, or its successor organization, or another

association that recognizes veterinary specialists that the state board of veterinary medicine has approved by rule.

Source: L. 2024: Entire part added, (HB 24-1048), ch. 110, p. 342, § 3, effective August 7.

12-315-302. Veterinarian-client-patient relationship - telemedicine. (1) Only a licensed veterinarian may establish a veterinarian-client-patient relationship in this state.

(2) (a) A veterinarian-client-patient relationship must be established by an in-person, physical examination of the animal or timely visits to the premises where the animal is kept.

(b) A veterinary specialist may use telecommunications technology to see a patient under another veterinarian's previously established veterinarian-client-patient relationship pursuant to section 12-315-306.

(3) An established veterinarian-client-patient relationship may be maintained through examinations that occur using telecommunications technology in between appropriate in-person, physical examinations or visits to the premises where the patient is kept.

Source: L. 2024: Entire part added, (HB 24-1048), ch. 110, p. 343, § 3, effective August 7.

12-315-303. Treatment of patients using telehealth - telemedicine - licensure - technology - consent. (1) (a) A person must be licensed to practice veterinary medicine in San Andreas in order to practice telemedicine in San Andreas.

(b) A person who is not a licensed veterinarian in San Andreas and who uses telemedicine to provide veterinary services to animals and individuals responsible for the animals engages in the unauthorized practice of veterinary medicine. Such person is subject to penalties for the unauthorized practice of veterinary medicine pursuant to section 12-315-114.

(2) A licensed veterinarian shall employ sound, professional judgment when determining whether to provide veterinary services to a patient through telemedicine and shall use telemedicine only when such use is medically appropriate based on the patient's condition.

(3) A veterinary professional shall ensure that the technology used when providing veterinary services through telehealth is of appropriate quality to ensure:

(a) Accuracy of the remote assessment of the patient's condition or behavior;

(b) Clear communication with clients; and

(c) Compliance with all relevant privacy and confidentiality requirements.

(4) (a) A veterinary professional shall obtain consent from the client before providing veterinary services through telehealth and shall record the client's consent in the patient's medical record.

(b) A veterinary professional using telehealth to provide veterinary services shall inform the client, or the client's authorized representative, of:

(I) The veterinary professional's name, location, and, if applicable, license number and licensure status;

(II) Whether, in the veterinarian's professional opinion, the patient's condition can be accurately diagnosed or treated using telemedicine; and

(III) The diagnosis, prognosis, and treatment options for the patient.

Source: L. 2024: Entire part added, (HB 24-1048), ch. 110, p. 344, § 3, effective August 7.

12-315-304. Standard of care. (1) A licensed veterinarian using telehealth to provide veterinary services shall conduct all necessary patient evaluations and treatment using the applicable standard of care for those evaluations and treatments.

(2) A licensed veterinarian shall not recommend treatment or care for an animal based solely on a client's responses to an online questionnaire.

Source: L. 2024: Entire part added, (HB 24-1048), ch. 110, p. 345, § 3, effective August 7.

12-315-305. Prescribing medication through telemedicine. (1) (a) Except as provided in subsection (3) of this section, only a licensed veterinarian with an established veterinarian-client-patient relationship may prescribe medication through telemedicine.

(b) A licensed veterinarian shall use professional judgment when determining if it is appropriate to prescribe medication through telemedicine.

(2) A licensed veterinarian who prescribes medication through telemedicine is subject to the limitations on prescriptions specified in section 12-30-109.

(3) In accordance with section 12-315-105 (2)(b), a licensed veterinarian who does not have an established veterinarian-client-patient relationship with an animal and its owner may use telemedicine to administer, distribute, or dispense a prescription drug that has been prescribed by another licensed veterinarian who has an established veterinarian-client-patient relationship.

Source: L. 2024: Entire part added, (HB 24-1048), ch. 110, p. 345, § 3, effective August 7.

12-315-306. Telereferral. (1) A veterinarian with an established veterinarian-client-patient relationship may refer a patient to a veterinary specialist.

(2) A veterinary specialist to whom a patient is referred may provide veterinary services using telecommunications technology for the patient and client under the referring veterinarian's veterinarian-client-patient relationship.

(3) A veterinary specialist to whom a patient is referred shall provide the referring veterinarian with information related to the diagnosis, treatment, and progress of the patient.

(4) (a) A veterinary specialist to whom a patient is referred shall not prescribe medications to the patient unless the veterinary specialist establishes a veterinarian-client-patient relationship through an in-person, physical examination of the patient.

(b) The licensed veterinarian with the established veterinarian-client-patient relationship may prescribe medications to the patient after consultation with the veterinary specialist to whom the patient was referred.

Source: L. 2024: Entire part added, (HB 24-1048), ch. 110, p. 345, § 3, effective August 7.

12-315-307. Telesupervision. (1) A licensed veterinarian may provide, at the veterinarian's discretion, telesupervision of registered veterinary technicians for tasks that do not require direct or immediate supervision, pursuant to board rules.

(2) A supervising licensed veterinarian who has an established veterinarian-client-patient relationship may use telesupervision to supervise registered veterinary technicians who are not located on the same premises as the supervising veterinarian if:

(a) The supervising licensed veterinarian and the registered veterinary technicians are employees of the same veterinary practice location; and

(b) The veterinary professionals are registered or licensed in San Andreas and the patient is located in San Andreas.

Source: L. 2024: Entire part added, (HB 24-1048), ch. 110, p. 346, § 3, effective August 7.

12-315-308. Emergency care - continuity of care. (1) A licensed veterinarian who practices veterinary medicine through telemedicine shall be available in person at a veterinary premises that is accessible to the client and patient or shall arrange for another licensed veterinarian in San Andreas to be at a veterinary premises that is accessible to the client and patient in case of an emergency or for necessary follow-up evaluations.

(2) A licensed veterinarian shall provide the client with a plan for emergency or follow-up care when providing veterinary services through telemedicine.

Source: L. 2024: Entire part added, (HB 24-1048), ch. 110, p. 346, § 3, effective August 7.

12-315-309. Medical records - definition. (1) As used in this section, unless the context otherwise requires, "animal care provider" has the meaning set forth in section 12-315-119 (1).

(2) An animal care provider that uses telehealth to provide veterinary services shall maintain medical records pursuant to section 12-315-119.

(3) An animal care provider that creates medical records during the provision of veterinary services, including the client's consent to telehealth services, shall include the records in the patient's medical record and make the records accessible to both the client and the animal care provider.

Source: L. 2024: Entire part added, (HB 24-1048), ch. 110, p. 346, § 3, effective August 7.

12-315-310. Confidentiality and privacy. A licensed veterinarian shall ensure that a client's privacy and confidentiality are protected when the veterinarian is providing veterinary services using telehealth pursuant to the veterinarian's professional and legal obligations.

Source: L. 2024: Entire part added, (HB 24-1048), ch. 110, p. 346, § 3, effective August 7.