

VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

CHAPTER 698

An Act to amend and reenact §§ 2.2-4024, 54.1-2400, 54.1-2950.1, 54.1-2956.8, and 54.1-2956.11 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 54.1-2409.3, relating to advisory boards to the Board of Medicine and membership on the Board of Medicine's disciplinary committees and panels.

[H 217]

Approved April 6, 2002

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4024, 54.1-2400, 54.1-2950.1, 54.1-2956.8, and 54.1-2956.11 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 54.1-2409.3 as follows:

§ 2.2-4024. Hearing officers.

A. In all formal hearings conducted in accordance with § 2.2-4020, the hearing shall be presided over by a hearing officer selected from a list prepared by the Executive Secretary of the Supreme Court and maintained in the Office of the Executive Secretary of the Supreme Court. Parties to informal fact-finding proceedings conducted pursuant to § 2.2-4019 may agree at the outset of the proceeding to have a hearing officer preside at the proceeding, such agreement to be revoked only by mutual consent. The Executive Secretary may promulgate rules necessary for the administration of the hearing officer system.

Prior to being included on the list, all hearing officers shall meet the following minimum standards:

1. Active membership in good standing in the Virginia State Bar;
2. Active practice of law for at least five years; and
3. Completion of a course of training approved by the Executive Secretary of the Supreme Court. In order to comply with the demonstrated requirements of the agency requesting a hearing officer, the Executive Secretary may require additional training before a hearing officer shall be assigned to a proceeding before that agency.

B. On request from the head of an agency, the Executive Secretary shall name a hearing officer from the list, selected on a rotation system administered by the Executive Secretary. Lists reflecting geographic preference and specialized training or knowledge shall be maintained by the Executive Secretary if an agency demonstrates the need.

C. A hearing officer shall voluntarily disqualify himself and withdraw from any case in which he cannot accord a fair and impartial hearing or consideration, or when required by the applicable rules governing the practice of law in the Commonwealth. Any party may request the disqualification of a hearing officer by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded, or the applicable rule of practice requiring disqualification.

The issue shall be determined not less than ten days prior to the hearing by the Executive Secretary of the Supreme Court.

D. Any hearing officer empowered by the agency to provide a recommendation or conclusion in a case decision matter shall render that recommendation or conclusion within ninety days from the date of the case decision proceeding or from a later date agreed to by the named party and the agency. If the hearing officer does not render a decision within ninety days, then the named party to the case decision may provide written notice to the hearing officer and the Executive Secretary of the Supreme Court that a decision is due. If no decision is made within thirty days from receipt by the hearing officer of the notice, then the Executive Secretary of the Supreme Court shall remove the hearing officer from the hearing officer list and report the hearing officer to the Virginia State Bar for possible disciplinary action, unless good cause is shown for the delay.

E. The Executive Secretary shall remove hearing officers from the list, upon a showing of cause after written notice and an opportunity for a hearing. When there is a failure by a hearing officer to render a decision as required by subsection D, the burden shall be on the hearing officer to show good cause for the delay. Decisions to remove a hearing officer may be reviewed by a request to the Executive Secretary for reconsideration, followed by judicial review in accordance with this chapter.

F. This section shall not apply to hearings conducted by (i) any commission or board where all of the members, or a quorum, are present; (ii) the Alcoholic Beverage Control Board, the Virginia Workers' Compensation Commission, the State Corporation Commission, the Virginia Employment Commission, the Department of Motor Vehicles under Title 46.2 (§ 46.2-100 et seq.), § 58.1-2409, or Chapter 27 (§ 58.1-2700 et seq.) of Title 58.1, or the Motor Vehicle Dealer Board under Chapter 15 (§ 46.2-1500 et seq.) of Title 46.2; or (iii) any panel of a health regulatory board convened pursuant to § 54.1-2400,

including any panel having members of a relevant advisory board to the Board of Medicine. All employees hired after July 1, 1986, pursuant to §§ 65.2-201 and 65.2-203 by the Virginia Workers' Compensation Commission to conduct hearings pursuant to its basic laws shall meet the minimum qualifications set forth in subsection A. Agency employees who are not licensed to practice law in the Commonwealth, and are presiding as hearing officers in proceedings pursuant to clause (ii) shall participate in periodic training courses.

G. Notwithstanding the exemptions of subsection A of § 2.2-4002, this article shall apply to hearing officers conducting hearings of the kind described in § 2.2-4020 for the Department of Game and Inland Fisheries, the Virginia Housing Development Authority, the Milk Commission and the Virginia Resources Authority pursuant to their basic laws.

§ 54.1-2400. General powers and duties of health regulatory boards.

The general powers and duties of health regulatory boards shall be:

1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.

2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.

3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.

4. To establish schedules for renewals of registration, certification and licensure.

5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.

6. To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title.

7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.

8. To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.

9. To take appropriate disciplinary action for violations of applicable law and regulations.

10. To appoint a special conference committee, composed of not less than two members of a health regulatory board *or, when required for special conference committees of the Board of Medicine, not less than two members of the Board and one member of the relevant advisory board*, to act in accordance with § 2.2-4019 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 2.2-4020, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.

11. To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 2.2-4020, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 2.2-4019 shall serve on a panel conducting formal proceedings pursuant to § 2.2-4020 to consider the same matter.

12. To issue inactive licenses or certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of licenses or certificates.

§ 54.1-2409.3. *Participation of advisory boards in disciplinary proceedings.*

Notwithstanding any provision of law to the contrary, whenever a disciplinary proceeding involves a respondent who holds a license or certificate authorizing the practice of a profession represented by a statutorily created advisory board whose members are appointed by the Governor, a member of such advisory board shall sit as a full voting member on any special conference committee, informal fact-finding panel or formal hearing panel pursuant to Article 3 (§ 2.2-4000 et seq.) of Chapter 40 of

Title 2.2, and §§ 54.1-2400, 54.1-2917, or § 54.1-2921.

§ 54.1-2950.1. Advisory Board on Physician Assistants; membership; qualifications.

The Advisory ~~Committee~~ *Board* on Physician Assistants is hereby established. The Advisory ~~Committee~~ shall *consist of five members* to be appointed by the Governor and shall be composed of ~~nine members~~; ~~three shall be physician members of the Board of Medicine, one shall be a physician who supervises at least one physician assistant and who is not a member of the Board, four for four-year terms, as follows: three members shall be licensed physician assistants who have practiced their professions in Virginia for not less than three years prior to their appointments;~~ *one shall be a physician who supervises at least one physician assistant;* and one shall be a citizen member appointed from the Commonwealth at-large. ~~Members shall be appointed for terms of four years. Vacancies occurring other than by expiration of term shall be filled for the unexpired term. No person shall be eligible to serve on the Advisory Committee Board for more than two successive terms.~~

§ 54.1-2956.8. Advisory Board on Radiological Technology; appointments; terms; etc.

The Advisory ~~Committee~~ *Board* on Radiological Technology shall assist the Board in carrying out the provisions of this chapter regarding the qualifications, examination, registration and regulation of certified radiological technology practitioners.

The ~~Committee~~ *Advisory Board* shall *consist of five members* to be appointed by the Board of Medicine and shall be composed of ~~six members~~ *Governor for four-year terms. Five* ~~Three~~ members shall serve terms of four years each; ~~one of the five shall be an at-large board-certified radiologist and four shall be licensed radiological technology practitioners who have been practicing in the Commonwealth for not less than three years prior to their appointments. The sixth member shall be a member of the Board of Medicine and shall serve at the pleasure of the Board. One member shall be a board-certified radiologist licensed in the Commonwealth and one member shall be a citizen member appointed from the Commonwealth at large.~~

Vacancies occurring other than by expiration of term shall be filled for the unexpired term. No person shall be eligible to serve on the ~~Committee~~ *Advisory Board* for more than two consecutive terms.

§ 54.1-2956.11. Advisory Board on Acupuncture; composition; appointment.

The Advisory ~~Committee~~ *Board* on Acupuncture, hereinafter referred to as the "Advisory ~~Committee~~ *Board*," shall assist the Board of Medicine in carrying out the provisions of this chapter regarding the qualifications, examination, licensure, and regulation of acupuncturists.

The Advisory ~~Committee~~ *Board* shall ~~be consist of five members to be~~ appointed by the Board of Medicine ~~Governor and shall be composed of seven members for four-year terms. Six of the members shall serve terms of four years each. Three of these six shall be doctors of medicine, osteopathy, or podiatry who are qualified by Board regulations to practice acupuncture in Virginia; and three of these six members shall be licensed acupuncturists who have been practicing in Virginia for not less than three years. The seventh member shall be a member of the Board of Medicine and shall serve at the pleasure of the president. Of the initial members so appointed, the three licensed acupuncturists shall be individuals, other than licensed practitioners of medicine, osteopathy, or podiatry, who are licensed to practice acupuncture in another state but are residing in Virginia. Thereafter, the three members who are licensed acupuncturists shall be residents of Virginia who are licensed as acupuncturists by the Board of Medicine and who are not also licensed by the Board to practice medicine, osteopathy, or podiatry. One member shall be a doctor of medicine, osteopathy, chiropractic or podiatry who is qualified to practice acupuncture in Virginia, and one member shall be a citizen member appointed from the Commonwealth at large.~~ Any vacancy occurring during a member's term shall be filled for the unexpired balance of that term. No person shall be eligible to serve on the Advisory ~~Committee~~ *Board* for more than two successive terms.