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HOUSE BILL NO. 1318

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions
on February 7, 2002)

(Patron Prior to Substitute—Delegate Stump)

A BILL to amend and reenact §§ 54.1-1701, 54.1-2701, 54.1-2901, 54.1-3001, 54.1-3202, 54.1-3301, and 54.1-3801 of the Code of Virginia, relating to volunteer services by certain providers.

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-1701, 54.1-2701, 54.1-2901, 54.1-3001, 54.1-3202, 54.1-3301, and 54.1-3801 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-1701. Exemptions.

The provisions of this chapter shall not apply to:

1. Any licensed physician or licensed optometrist; or

2. Any individual, partnership or corporation engaged in supplying ophthalmic prescriptions and supplies exclusively to licensed physicians, licensed optometrists, licensed opticians, or optical scientists; or

3. Any person who does not hold himself out to the public as an "optician," and who works exclusively under the direct supervision and control of a licensed physician or licensed optometrist or licensed optician, and in the same location; or

4. The sale of spectacles, eyeglasses, magnifying glasses, goggles, sunglasses, telescopes, or binoculars which are completely preassembled and sold as merchandise; or

5. Any optician who (i) does not regularly practice in Virginia, (ii) holds a current valid license or certificate to practice as an optician in another state, territory, district or possession of the United States, (iii) volunteers to provide free health care to an underserved area of this Commonwealth under the auspices of a publicly supported all volunteer, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world, (iv) files a copy of the license or certificate issued in such other jurisdiction with the Board, (v) notifies the Board, within fifteen days prior to the voluntary provision of services of the dates and location of such services, and (vi) acknowledges, in writing, that such licensure exemption shall only be valid, in compliance with the Board's regulations, during the limited period that such free health care is made available through the volunteer, nonprofit organization on the dates and at the location filed with the Board.

§ 54.1-2701. Exemptions.

This chapter shall not:

1. Apply to a licensed physician or surgeon unless he practices dentistry as a specialty;

2. Apply to a nurse practitioner certified by the Board of Nursing and the Board of Medicine except that intraoral procedures shall be performed only under the direct supervision of a licensed dentist;

3. Apply to a dentist or a dental hygienist of the United States Army, Navy, Coast Guard, Air Force, Public Health Service, or Veterans Administration;

4. Apply to any dentist of the United States Army, Navy, Coast Guard, or Air Force rendering services voluntarily and without compensation while deemed to be licensed pursuant to § 54.1-106; or

5. Apply to any dentist or dental hygienist who (i) does not regularly practice dentistry in Virginia, (ii) holds a current valid license or certificate to practice as a dentist or dental hygienist in another state, territory, district or possession of the United States, (iii) volunteers to provide free health care to an underserved area of this Commonwealth under the auspices of a publicly supported all volunteer, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world, (iv) files a copy of the license or certificate issued in such other jurisdiction with the Board, (v) notifies the Board at least fifteen days prior to the voluntary provision of services of the dates and location of such service, and (vi) acknowledges, in writing, that such licensure exemption shall only be valid, in compliance with the Board's regulations, during the limited period that such free health care is made available through the volunteer, nonprofit organization on the dates and at the location filed with the Board. The Board may deny the right to practice in Virginia to any dentist or dental hygienist whose license has been previously suspended or revoked, who has been convicted of a felony or who is otherwise found to be in violation of applicable laws or regulations; or

6. Prevent an office assistant from performing usual secretarial duties or other assistance as set forth in regulations promulgated by the Board.

§ 54.1-2901. Exceptions and exemptions generally.

The provisions of this chapter shall not prevent or prohibit:

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- 60 1. Any person entitled to practice his profession under any prior law on June 24, 1944, from
61 continuing such practice within the scope of the definition of his particular school of practice;
- 62 2. Any person licensed to practice naturopathy prior to June 30, 1980, from continuing such practice
63 in accordance with regulations promulgated by the Board;
- 64 3. Any licensed nurse practitioner from rendering care under the supervision of a duly licensed
65 physician when such services are authorized by regulations promulgated jointly by the Board of
66 Medicine and the Board of Nursing;
- 67 4. Any registered professional nurse, registered midwife, licensed nurse practitioner, graduate
68 laboratory technician or other technical personnel who have been properly trained from rendering care or
69 services within the scope of their usual professional activities which shall include the taking of blood,
70 the giving of intravenous infusions and intravenous injections, and the insertion of tubes when
71 performed under the orders of a person licensed to practice medicine;
- 72 5. Any dentist, pharmacist or optometrist from rendering care or services within the scope of his
73 usual professional activities;
- 74 6. Any practitioner licensed or certified by the Board from delegating to personnel supervised by
75 him, such activities or functions as are nondiscretionary and do not require the exercise of professional
76 judgment for their performance and which are usually or customarily delegated to such persons by
77 practitioners of the healing arts, if such activities or functions are authorized by and performed for such
78 practitioners of the healing arts and responsibility for such activities or functions is assumed by such
79 practitioners of the healing arts;
- 80 7. The rendering of medical advice or information through telecommunications from a physician
81 licensed to practice medicine in Virginia or an adjoining state to emergency medical personnel acting in
82 an emergency situation;
- 83 8. The domestic administration of family remedies;
- 84 9. The giving or use of massages, steam baths, dry heat rooms, infrared heat or ultraviolet lamps in
85 public or private health clubs and spas;
- 86 10. The manufacture or sale of proprietary medicines in this Commonwealth by licensed pharmacists
87 or druggists;
- 88 11. The advertising or sale of commercial appliances or remedies;
- 89 12. The fitting by nonitinerant persons or manufacturers of artificial eyes, limbs or other apparatus or
90 appliances or the fitting of plaster cast counterparts of deformed portions of the body by a nonitinerant
91 bracer or prosthetist for the purpose of having a three-dimensional record of the deformity, when
92 such bracer or prosthetist has received a prescription from a licensed physician directing the fitting
93 of such casts and such activities are conducted in conformity with the laws of Virginia;
- 94 13. Any person from the rendering of first aid or medical assistance in an emergency in the absence
95 of a person licensed to practice medicine or osteopathy under the provisions of this chapter;
- 96 14. The practice of the religious tenets of any church in the ministration to the sick and suffering by
97 mental or spiritual means without the use of any drug or material remedy, whether gratuitously or for
98 compensation;
- 99 15. Any legally qualified out-of-state or foreign practitioner from meeting in consultation with legally
100 licensed practitioners in this Commonwealth;
- 101 16. Any practitioner of the healing arts licensed or certified and in good standing with the applicable
102 regulatory agency in another state or Canada when that practitioner of the healing arts is in Virginia
103 temporarily and such practitioner has been issued a temporary license or certification by the Board from
104 practicing medicine or the duties of the profession for which he is licensed or certified (i) in a summer
105 camp or in conjunction with patients who are participating in recreational activities, (ii) while
106 participating in continuing educational programs prescribed by the Board, or (iii) by rendering at any
107 site any health care services within the limits of his license, voluntarily and without compensation, to
108 any patient of any clinic which is organized in whole or in part for the delivery of health care services
109 without charge as provided in § 54.1-106;
- 110 17. The performance of the duties of any commissioned or contract medical officer, or podiatrist in
111 active service in the army, navy, coast guard, marine corps, air force, or public health service of the
112 United States while such individual is so commissioned or serving;
- 113 18. Any masseur, who publicly represents himself as such, from performing services within the scope
114 of his usual professional activities and in conformance with state law;
- 115 19. Any person from performing services in the lawful conduct of his particular profession or
116 business under state law;
- 117 20. Any person from rendering emergency care pursuant to the provisions of § 8.01-225;
- 118 21. Qualified emergency medical services personnel, when acting within the scope of their
119 certification, and licensed health care practitioners, when acting within their scope of practice, from
120 following Durable Do Not Resuscitate Orders issued in accordance with § 54.1-2987.1 and Board of
121 Health regulations, or licensed health care practitioners from following any other written order of a

physician not to resuscitate a patient in the event of cardiac or respiratory arrest;

22. Any commissioned or contract medical officer of the army, navy, coast guard or air force rendering services voluntarily and without compensation while deemed to be licensed pursuant to § 54.1-106;

23. Any provider of a chemical dependency treatment program who is certified as an "acupuncture detoxification specialist" by the National Acupuncture Detoxification Association or an equivalent certifying body, from administering auricular acupuncture treatment under the appropriate supervision of a National Acupuncture Detoxification Association certified licensed physician or licensed acupuncturist;

24. Any employee of any assisted living facility who is certified in cardiopulmonary resuscitation (CPR) acting in compliance with the patient's individualized service plan and with the written order of the attending physician not to resuscitate a patient in the event of cardiac or respiratory arrest;

25. Any person working as a health assistant under the direction of a licensed medical or osteopathic doctor within the Department of Corrections, the Department of Juvenile Justice or local correctional facilities; or

26. Any employee of a school board, authorized by a prescriber and trained in the administration of insulin and glucagon, when, upon the authorization of a prescriber and the written request of the parents as defined in § 22.1-1, assisting with the administration of insulin or administering glucagon to a student diagnosed as having diabetes and who requires insulin injections during the school day or for whom glucagon has been prescribed for the emergency treatment of hypoglycemia; or

27. Any practitioner of the healing arts or other profession regulated by the Board from rendering free health care to an underserved population of Virginia who (i) does not regularly practice his profession in Virginia, (ii) holds a current valid license or certificate to practice his profession in another state, territory, district or possession of the United States, (iii) volunteers to provide free health care to an underserved area of this Commonwealth under the auspices of a publicly supported all volunteer, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world, (iv) files a copy of the license or certification issued in such other jurisdiction with the Board, (v) notifies the Board at least fifteen days prior to the voluntary provision of services of the dates and location of such service, and (vi) acknowledges, in writing, that such licensure exemption shall only be valid, in compliance with the Board's regulations, during the limited period that such free health care is made available through the volunteer, nonprofit organization on the dates and at the location filed with the Board. The Board may deny the right to practice in Virginia to any practitioner of the healing arts whose license or certificate has been previously suspended or revoked, who has been convicted of a felony or who is otherwise found to be in violation of applicable laws or regulations.

§ 54.1-3001. Exemptions.

This chapter shall not apply to the following:

1. The furnishing of nursing assistance in an emergency;

2. The practice of nursing, which is prescribed as part of a study program, by nursing students enrolled in nursing education programs approved by the Board or by graduates of approved nursing education programs for a period not to exceed ninety days following successful completion of the nursing education program pending the results of the licensing examination, provided proper application and fee for licensure have been submitted to the Board and unless the graduate fails the licensing examination within the ninety-day period;

3. The practice of any legally qualified nurse of another state who is employed by the United States government while in the discharge of his official duties;

4. The practice of nursing by a nurse who holds a current unrestricted license in another state, the District of Columbia or a United States possession or territory for a period of thirty days pending licensure in Virginia, if the nurse, upon employment, has furnished the employer satisfactory evidence of current licensure and submits proper application and fees to the Board for licensure before, or within ten days after, employment. At the discretion of the Board, additional time may be allowed for nurses currently licensed in another state, the District of Columbia or a United States possession or territory who are in the process of attaining the qualification for licensure in this Commonwealth;

5. The practice of nursing by any registered nurse who holds a current unrestricted license in another state, the District of Columbia, or a United States possession or territory, or a nurse who holds an equivalent credential in a foreign country, while enrolled in an advanced professional nursing program requiring clinical practice. This exemption extends only to clinical practice required by the curriculum;

6. The practice of nursing by any nurse who holds a current unrestricted license in another state, the District of Columbia, or a United States possession or territory and is employed to provide care to any private individual while such private individual is traveling through or temporarily staying, as defined in the Board's regulations, in the Commonwealth;

7. General care of the sick by nursing assistants, companions or domestic servants that does not

183 constitute the practice of nursing as defined in this chapter;

184 8. The care of the sick when done solely in connection with the practice of religious beliefs by the
185 adherents and which is not held out to the public to be licensed practical or professional nursing;

186 9. Any employee of a school board, authorized by a prescriber and trained in the administration of
187 insulin and glucagon, when, upon the authorization of a prescriber and the written request of the parents
188 as defined in § 22.1-1, assisting with the administration of insulin or administering glucagon to a
189 student diagnosed as having diabetes and who requires insulin injections during the school day or for
190 whom glucagon has been prescribed for the emergency treatment of hypoglycemia; and

191 10. The practice of nursing by any nurse who is a graduate of a foreign nursing school and has met
192 the credential, language, and academic testing requirements of the Commission on Graduates of Foreign
193 Nursing Schools for a period not to exceed ninety days from the date of approval of an application
194 submitted to the Board when such nurse is working as a nonsupervisory staff nurse in a licensed nursing
195 home or certified nursing facility. During such ninety-day period, such nurse shall take and pass the
196 licensing examination to remain eligible to practice nursing in Virginia; no exemption granted under this
197 subdivision shall be extended; or

198 11. *The practice of nursing by any nurse rendering free health care to an underserved population in*
199 *Virginia who (i) does not regularly practice nursing in Virginia, (ii) holds a current valid license or*
200 *certification to practice nursing in another state, territory, district or possession of the United States,*
201 *(iii) volunteers to provide free health care to an underserved area of this Commonwealth under the*
202 *auspices of a publicly supported all volunteer, nonprofit organization with no paid employees that*
203 *sponsors the provision of health care to populations of underserved people throughout the world, (iv)*
204 *files a copy of the license or certification issued in such other jurisdiction with the Board, (v) notifies*
205 *the Board at least fifteen days prior to the voluntary provision of services of the dates and location of*
206 *such service, and (vi) acknowledges, in writing, that such licensure exemption shall only be valid, in*
207 *compliance with the Board's regulations, during the limited period that such free health care is made*
208 *available through the volunteer, nonprofit organization on the dates and at the location filed with the*
209 *Board. The Board may deny the right to practice in Virginia to any nurse whose license or certificate*
210 *has been previously suspended or revoked, who has been convicted of a felony or who is otherwise*
211 *found to be in violation of applicable laws or regulations.*

212 § 54.1-3202. Exemptions.

213 This chapter shall not apply to:

214 1. ~~physicians~~ Physicians licensed to practice medicine by the Board of Medicine or to prohibit the
215 sale of nonprescription eyeglasses and sunglasses. Contact lenses shall not be sold as merchandise from
216 a retail business other than one operated by a physician, an optometrist or an optician; or

217 2. Any optometrist rendering free health care to an underserved population in Virginia who (i) does
218 not regularly practice optometry in Virginia, (ii) holds a current valid license or certificate to practice
219 optometry in another state, territory, district or possession of the United States, (iii) volunteers to
220 provide free health care in an underserved area of this Commonwealth under the auspices of a publicly
221 supported all volunteer, nonprofit organization with no paid employees that sponsors the provision of
222 health care to populations of underserved people throughout the world, (iv) files a copy of his license or
223 certification in such other jurisdiction with the Board, (v) notifies the Board at least fifteen days prior to
224 the voluntary provision of services of the dates and location of such service, and (vi) acknowledges, in
225 writing, that such licensure exemption shall only be valid, in compliance with the Board's regulations,
226 during the limited period that such free health care is made available through the volunteer, nonprofit
227 organization on the dates and at the location filed with the Board. The Board may deny the right to
228 practice in Virginia to any optometrist whose license or certificate has been previously suspended or
229 revoked, who has been convicted of a felony or who is otherwise found to be in violation of applicable
230 laws or regulations.

231 § 54.1-3301. Exceptions.

232 This chapter shall not be construed to:

233 1. Interfere with any legally qualified practitioner of dentistry, or veterinary medicine or any
234 physician acting on behalf of the Virginia Department of Health or local health departments, in the
235 compounding of his prescriptions or the purchase and possession of drugs as he may require;

236 2. Prevent any legally qualified practitioner of dentistry, or veterinary medicine or any physician
237 acting on behalf of the Virginia Department of Health or local health departments, from administering or
238 supplying to his patients the medicines that he deems proper under the conditions of § 54.1-3303;

239 3. Prohibit the sale by merchants and retail dealers of proprietary medicines as defined in Chapter 34
240 (§ 54.1-3400 et seq.) of this title;

241 4. Prevent the operation of automated drug dispensing systems in hospitals pursuant to Chapter 34
242 (§ 54.1-3400 et seq.) of this title;

243 5. Prohibit the employment of ancillary personnel to assist a pharmacist as provided in the
244 regulations of the Board;

6. Interfere with any legally qualified practitioner of medicine, osteopathy, or podiatry from purchasing, possessing or administering controlled substances to his own patients or providing controlled substances to his own patients in a bona fide medical emergency or providing manufacturers' professional samples to his own patients;

7. Interfere with any legally qualified practitioner of optometry, certified or licensed to use diagnostic pharmaceutical agents, from purchasing, possessing or administering those controlled substances as specified in § 54.1-3221 or interfere with any legally qualified practitioner of optometry certified to prescribe therapeutic pharmaceutical agents from purchasing, possessing, or administering to his own patients those controlled substances as specified in § 54.1-3222 and the TPA formulary or providing manufacturers' samples of these drugs to his own patients;

8. Interfere with any physician assistant with prescriptive authority receiving and dispensing to his own patients manufacturers' professional samples of controlled substances and devices that he is authorized, in compliance with the provisions of § 54.1-2952.1, to prescribe according to his practice setting and a written agreement with a physician or podiatrist; or

9. Interfere with any licensed nurse practitioner with prescriptive authority receiving and dispensing to his own patients manufacturers' professional samples of controlled substances and devices that he is authorized, in compliance with the provisions of § 54.1-2957.01, to prescribe according to his practice setting and a written agreement with a physician; or

10. *Prevent any pharmacist from providing free health care to an underserved population in Virginia who (i) does not regularly practice pharmacy in Virginia, (ii) holds a current valid license or certificate to practice pharmacy in another state, territory, district or possession of the United States, (iii) volunteers to provide free health care to an underserved area of this Commonwealth under the auspices of a publicly supported all volunteer, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world, (iv) files a copy of the license or certificate issued in such other jurisdiction with the Board, (v) notifies the Board at least fifteen days prior to the voluntary provision of services of the dates and location of such service, and (vi) acknowledges, in writing, that such licensure exemption shall only be valid, in compliance with the Board's regulations, during the limited period that such free health care is made available through the volunteer, nonprofit organization on the dates and at the location filed with the Board. The Board may deny the right to practice in Virginia to any pharmacist whose license has been previously suspended or revoked, who has been convicted of a felony or who is otherwise found to be in violation of applicable laws or regulations.*

This section shall not be construed as exempting any person from the licensure, registration, permitting and record keeping requirements of this chapter or Chapter 34 of this title.

§ 54.1-3801. Exceptions.

This chapter shall not apply to:

~~(i) the~~ 1. The owner of an animal and the owner's full-time, regular employee caring for and treating the animal belonging to such owner, except where the ownership of the animal was transferred for the purpose of circumventing the requirements of this chapter; ~~or (ii) to veterinarians;~~

2. Veterinarians licensed in other states called in actual consultation or to attend a case in this Commonwealth who do not open an office or appoint a place to practice within this Commonwealth; ~~or (iii) to veterinarians;~~

3. Veterinarians employed by the United States or by this Commonwealth while actually engaged in the performance of their official duties; or

4. Veterinarians providing free care in underserved areas of Virginia who (i) do not regularly practice veterinary medicine in Virginia, (ii) hold a current valid license or certificate to practice veterinary medicine in another state, territory, district or possession of the United States, (iii) volunteer to provide free care in an underserved area of this Commonwealth under the auspices of a publicly supported all volunteer, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world, (iv) file copies of their licenses or certificates issued in such other jurisdiction with the Board, (v) notify the Board at least fifteen days prior to the voluntary provision of services of the dates and location of such service, and (vi) acknowledge, in writing, that such licensure exemption shall only be valid, in compliance with the Board's regulations, during the limited period that such free health care is made available through the volunteer, nonprofit organization on the dates and at the location filed with the Board. The Board may deny the right to practice in Virginia to any veterinarian whose license has been previously suspended or revoked, who has been convicted of a felony or who is otherwise found to be in violation of applicable laws or regulations.

2. That the Board for Opticians and the Boards of Dentistry, Medicine, Nursing, Optometry, Pharmacy, and Veterinary Medicine shall promulgate regulations to implement this act within 280 days of its enactment.

306 3. That the Board for Opticians and the Boards of Dentistry, Medicine, Nursing, Optometry,
307 Pharmacy, and Veterinary Medicine may establish requirements for the publicly supported all
308 volunteer, nonprofit organization with no paid employees that sponsors the provision of health
309 care to populations of underserved people throughout the world to register and pay a fee prior to
310 providing services in this Commonwealth.