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HOUSE BILL NO. 889

Offered January 9, 2002

Prefiled January 9, 2002

A BILL to amend and reenact § 54.1-2901 of the Code of Virginia, and to amend the Code of Virginia by adding in Article 4 of Chapter 29 of Title 54.1 sections numbered 54.1-2957.7 through 54.1-2957.12, relating to the practice of midwifery.

Patrons—Hamilton and Dudley

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-2901 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 4 of Chapter 29 of Title 54.1 sections numbered 54.1-2957.7 through 54.1-2957.12 as follows:

§ 54.1-2901. Exceptions and exemptions generally.

The provisions of this chapter shall not prevent or prohibit:

1. Any person entitled to practice his profession under any prior law on June 24, 1944, from continuing such practice within the scope of the definition of his particular school of practice;
2. Any person licensed to practice naturopathy prior to June 30, 1980, from continuing such practice in accordance with regulations promulgated by the Board;
3. Any licensed nurse practitioner from rendering care under the supervision of a duly licensed physician when such services are authorized by regulations promulgated jointly by the Board of Medicine and the Board of Nursing;
4. Any registered professional nurse, registered midwife, licensed nurse practitioner, graduate laboratory technician or other technical personnel who have been properly trained from rendering care or services within the scope of their usual professional activities which shall include the taking of blood, the giving of intravenous infusions and intravenous injections, and the insertion of tubes when performed under the orders of a person licensed to practice medicine;
5. Any dentist, pharmacist or optometrist from rendering care or services within the scope of his usual professional activities;
6. Any practitioner licensed or certified by the Board from delegating to personnel supervised by him, such activities or functions as are nondiscretionary and do not require the exercise of professional judgment for their performance and which are usually or customarily delegated to such persons by practitioners of the healing arts, if such activities or functions are authorized by and performed for such practitioners of the healing arts and responsibility for such activities or functions is assumed by such practitioners of the healing arts;
7. The rendering of medical advice or information through telecommunications from a physician licensed to practice medicine in Virginia or an adjoining state to emergency medical personnel acting in an emergency situation;
8. The domestic administration of family remedies;
9. The giving or use of massages, steam baths, dry heat rooms, infrared heat or ultraviolet lamps in public or private health clubs and spas;
10. The manufacture or sale of proprietary medicines in this Commonwealth by licensed pharmacists or druggists;
11. The advertising or sale of commercial appliances or remedies;
12. The fitting by nonitinerant persons or manufacturers of artificial eyes, limbs or other apparatus or appliances or the fitting of plaster cast counterparts of deformed portions of the body by a nonitinerant bracer or prosthetist for the purpose of having a three-dimensional record of the deformity, when such bracer or prosthetist has received a prescription from a licensed physician directing the fitting of such casts and such activities are conducted in conformity with the laws of Virginia;
13. Any person from the rendering of first aid or medical assistance in an emergency in the absence of a person licensed to practice medicine or osteopathy under the provisions of this chapter;
14. The practice of the religious tenets of any church in the ministration to the sick and suffering by mental or spiritual means without the use of any drug or material remedy, whether gratuitously or for compensation;
15. Any legally qualified out-of-state or foreign practitioner from meeting in consultation with legally licensed practitioners in this Commonwealth;
16. Any practitioner of the healing arts licensed or certified and in good standing with the applicable

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59 regulatory agency in another state or Canada when that practitioner of the healing arts is in Virginia
60 temporarily and such practitioner has been issued a temporary license or certification by the Board from
61 practicing medicine or the duties of the profession for which he is licensed or certified (i) in a summer
62 camp or in conjunction with patients who are participating in recreational activities, (ii) while
63 participating in continuing educational programs prescribed by the Board, or (iii) by rendering at any
64 site any health care services within the limits of his license, voluntarily and without compensation, to
65 any patient of any clinic which is organized in whole or in part for the delivery of health care services
66 without charge as provided in § 54.1-106;

67 17. The performance of the duties of any commissioned or contract medical officer, or podiatrist in
68 active service in the army, navy, coast guard, marine corps, air force, or public health service of the
69 United States while such individual is so commissioned or serving;

70 18. Any masseur, who publicly represents himself as such, from performing services within the scope
71 of his usual professional activities and in conformance with state law;

72 19. Any person from performing services in the lawful conduct of his particular profession or
73 business under state law;

74 20. Any person from rendering emergency care pursuant to the provisions of § 8.01-225;

75 21. Qualified emergency medical services personnel, when acting within the scope of their
76 certification, and licensed health care practitioners, when acting within their scope of practice, from
77 following Durable Do Not Resuscitate Orders issued in accordance with § 54.1-2987.1 and Board of
78 Health regulations, or licensed health care practitioners from following any other written order of a
79 physician not to resuscitate a patient in the event of cardiac or respiratory arrest;

80 22. Any commissioned or contract medical officer of the army, navy, coast guard or air force
81 rendering services voluntarily and without compensation while deemed to be licensed pursuant to
82 § 54.1-106;

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

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

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

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

98 27. Any licensed midwife from rendering care and services within the scope of his usual professional
99 activities.

100 § 54.1-2957.7. Licensed midwife and practice of midwifery; definitions.

101 A. "Midwife" means any person who provides primary maternity care by affirmative act or conduct
102 immediately prior to, during, and subsequent to childbirth, and who is not licensed as a physician or
103 certified nurse midwife.

104 B. "Practicing midwifery" means providing maternity-related care that is consistent with a midwife's
105 training, education and experience to women and their newborns throughout the childbearing cycle, and
106 identifying and referring women who require medical care to an appropriate practitioner.

107 § 54.1-2957.8. Licensure of midwives; requisite training and educational requirements; fees.

108 A. It shall be unlawful for any person to hold himself out as a midwife licensed to practice in the
109 Commonwealth unless he holds a license to practice midwifery in the Commonwealth. The Board shall
110 license an applicant as a midwife after such applicant has submitted evidence satisfactory to the Board
111 that he has obtained the Certified Professional Midwife (CPM) credential pursuant to regulations
112 adopted by the Board.

113 B. Persons seeking licensure as a midwife shall submit such information as required in the form and
114 manner determined by the Board.

115 C. Persons seeking licensure shall pay the required license fee as determined by the Board.

116 D. The Board shall adopt regulations governing the practice of midwifery, upon consultation with the
117 Advisory Council on Midwifery, (i) addressing the statutory requirements of the practice of midwifery;
118 (ii) consistent with the current job analysis for the profession; (iii) ensuring professional autonomy; (iv)
119 providing for an appropriate license fee; and (v) including requirements for licensure renewal and
120 continuing education. Such regulations shall not (a) require any agreement, written or otherwise, with

another health care professional, or (b) require the assessment of a woman who is seeking midwifery services by another health care professional.

E. Licenses shall be valid for three years with renewal contingent upon maintaining a Certified Professional Midwife certification.

§ 54.1-2957.9. Requirements for disclosure.

Any person practicing as a licensed midwife shall provide disclosure of specific information in writing to any client to whom midwifery care is provided. Such disclosure shall include, but not be limited to, (i) a description of the licensed midwife's qualifications, experience, and training; (ii) a written protocol for medical emergencies, including hospital transport, particular to each client; (iii) a description of the midwives' model of care; (iv) a copy of the state regulations governing the practice of midwifery; (v) a statement concerning the licensed midwife's malpractice or liability insurance coverage; (vi) a description of the right to file a complaint with the Board and the procedures for filing such complaint; and (vii) such other information as the Board determines is appropriate to allow the client to make an informed choice to select midwifery care.

§ 54.1-2957.10. Advisory Council on Midwifery established; duties; composition; appointment; terms; compensation; staffing.

A. There is hereby created in the executive branch of state government the Advisory Council on Midwifery to assist the Board in formulating regulations pertaining to the practice of licensed midwifery.

B. The Advisory Council shall be appointed by the Governor for four-year terms and shall be composed of seven members. Three of the members shall be Certified Professional Midwives and four shall be citizen members. At least two of the citizen members shall have been consumers of out-of-hospital midwifery services. The initial appointments shall provide for staggered terms with three members being appointed for two-year terms, three members appointed for three-year terms, and one member appointed for a four-year term.

C. All members of the Advisory Council shall be residents of the Commonwealth, vacancies occurring other than by expiration of the term shall be filled for the unexpired term. No person shall be eligible to serve on the Advisory Council for more than two consecutive full terms.

D. Compensation for expenses incurred by members of the Advisory Council shall be made pursuant to the provisions of §§ 2.1-20.3, 2.1-20.8, and 2.1-20.10.

E. Staff support shall be provided by the Board.

F. All agencies of the state shall provide assistance to the Advisory Council upon request.

§ 54.1-2957.11. Immunity.

Licensed midwives shall be liable for their acts or omissions in the performance of the services that they provide, but no physician, nurse, pre-hospital emergency medical personnel, or health care institution shall be liable for any act or omission resulting from the administration of services by any licensed midwife. However, no other licensed midwife, physician, nurse, pre-hospital emergency personnel, or health care institution shall be exempt from liability for any willful and wanton act or omission or any act or omission constituting gross negligence, or under circumstances where a licensed midwife has a business relationship with any such licensed midwife, physician, nurse, pre-hospital emergency personnel, or health care institution. A physician, nurse, pre-hospital emergency person, or health care institution shall not be deemed to have established a business relationship solely by providing consultation to or accepting referral from the midwife.

§ 54.1-2957.12. Exceptions.

The provisions of this chapter shall not prevent or prohibit:

1. Any licensed physician or certified nurse midwife from providing midwifery services within the scope of his usual professional activities and in conformance with state law; or

2. Any licensed midwife from delegating to an apprentice or personnel in his personal employ and supervised by him such activities or functions as are nondiscretionary and that do not require the exercise of professional judgment for their performance, if such activities or functions are authorized by and performed for the licensed midwife and responsibility for such activities or functions is assumed by the licensed midwife.

2. That the Board shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.