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HOUSE BILL NO. 1441

Offered January 8, 2003

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A BILL to amend and reenact §§ 32.1-27, 54.1-111, 54.1-2400, 54.1-2400.2, 54.1-2400.3, 54.1-2400.4, 54.1-2401, 54.1-2505, 54.1-2506, 54.1-2906, 54.1-2908, 54.1-2909, 54.1-2911, 54.1-2915, and 54.1-3480 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 32.1-125.01, 54.1-2408.2, and 54.1-2506.01, and to repeal §§ 54.1-2921 and 54.1-3218 of the Code of Virginia, relating to disciplinary procedures by health regulatory boards; penalty; study.

Patrons—Sears, Cole, Dudley, Jones, S.C. and Suit

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-27, 54.1-111, 54.1-2400, 54.1-2400.2, 54.1-2400.3, 54.1-2400.4, 54.1-2401, 54.1-2505, 54.1-2506, 54.1-2906, 54.1-2908, 54.1-2909, 54.1-2911, 54.1-2915, and 54.1-3480 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 32.1-125.01, 54.1-2408.2 and 54.1-2506.01 as follows:

§ 32.1-27. Penalties, injunctions, civil penalties and charges for violations.

A. Any person willfully violating or refusing, failing or neglecting to comply with any regulation or order of the Board or Commissioner or any provision of this title shall be guilty of a Class 1 misdemeanor unless a different penalty is specified.

B. Any person violating or failing, neglecting, or refusing to obey any lawful regulation or order of the Board or Commissioner or any provision of this title may be compelled in a proceeding instituted in an appropriate court by the Board or Commissioner to obey such regulation, order or provision of this title and to comply therewith by injunction, mandamus, or other appropriate remedy or, pursuant to § 32.1-27.1, imposition of a civil penalty or appointment of a receiver.

C. Without limiting the remedies which may be obtained in subsection B of this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to subsection B shall be subject, in the discretion of the court, to a civil penalty not to exceed \$10,000 for each violation, which shall be paid to the general fund, except that civil penalties for environmental pollution shall be paid into the state treasury and credited to the Water Supply Assistance Grant Fund created pursuant to § 32.1-171.2. Each day of violation shall constitute a separate offense.

D. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the Board or Commissioner or any provision of this title, the Board may provide, in an order issued by the Board against such person, for the payment of civil charges for past violations in specific sums, not to exceed the limits specified in § 32.1-27.1 and subsection C of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under § 32.1-27.1 and subsection C of this section. When civil charges are based upon environmental pollution, the civil charges shall be paid into the state treasury and credited to the Water Supply Assistance Grant Fund created pursuant to § 32.1-171.2.

§ 32.1-125.01. *Failing to report disciplinary actions and certain disorders of health professionals; penalty.*

Any hospital or nursing home that has not paid civil penalties assessed for failing to report disciplinary actions and certain disorders of health pursuant to § 54.1-2906 shall not be issued a license or certification or a renewal of such.

§ 54.1-111. Unlawful acts; prosecution; proceedings in equity; civil penalty.

A. It shall be unlawful for any person, partnership, corporation or other entity to engage in any of the following acts:

1. Practicing a profession or occupation without holding a valid license as required by statute or regulation.

2. Making use of any designation provided by statute or regulation to denote a standard of professional or occupational competence without being duly certified or licensed.

3. Making use of any titles, words, letters or abbreviations which may reasonably be confused with a designation provided by statute or regulation to denote a standard of professional or occupational competence without being duly certified or licensed.

4. Performing any act or function which is restricted by statute or regulation to persons holding a professional or occupational license or certification, without being duly certified or licensed.

5. Failing to register as a practitioner of a profession or occupation as required by statute or

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59 regulation.

60 6. Materially misrepresenting facts in an application for licensure, certification or registration.

61 7. Willfully refusing to furnish a regulatory board information or records required or requested
62 pursuant to statute or regulation.

63 8. Violating any statute or regulation governing the practice of any profession or occupation
64 regulated pursuant to this title.

65 9. Refusing to process a request, tendered in accordance with the regulations of the relevant health
66 regulatory board or applicable statutory law, for patient records or prescription dispensing records after
67 the closing of a business or professional practice or the transfer of ownership of a business or
68 professional practice.

69 Any person who willfully engages in any unlawful act enumerated in this section shall be guilty of a
70 Class 1 misdemeanor. The third or any subsequent conviction for violating this section during a
71 thirty-six-month period shall constitute a Class 6 felony.

72 B. In addition to the criminal penalties provided for in subsection A, the Department of Professional
73 and Occupational Regulation or the Department of Health Professions, without compliance with the
74 Administrative Process Act (§ 2.2-4000 et seq.), shall have the authority to enforce the provisions of
75 subsection A and may institute proceedings in equity to enjoin any person, partnership, corporation or
76 any other entity from engaging in any unlawful act enumerated in this section and to recover a civil
77 penalty of at least \$200 but not more than \$1,000,000 per violation, with each unlawful act constituting
78 a separate violation; but in no event shall the civil penalties against any one person, partnership,
79 corporation or other entity exceed \$10,000 per year. Such proceedings shall be brought in the name of
80 the Commonwealth by the appropriate Department in the circuit court or general district court of the city
81 or county in which the unlawful act occurred or in which the defendant resides.

82 C. This section shall not be construed to prohibit or prevent the owner of patient records from (i)
83 retaining copies of his patient records or prescription dispensing records after the closing of a business
84 or professional practice or the transfer of ownership of a business or professional practice or (ii)
85 charging a reasonable fee, not in excess of the amounts authorized in § 8.01-413, for copies of patient
86 records.

87 § 54.1-2400. General powers and duties of health regulatory boards.

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

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

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

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

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

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

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

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

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

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

111 10. To appoint a special conference committee, composed of not less than two members of a health
112 regulatory board or, when required for special conference committees of the Board of Medicine, not less
113 than two members of the Board and one member of the relevant advisory board, to act in accordance
114 with § 2.2-4019 upon receipt of information that a practitioner of the appropriate board may be subject
115 to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate
116 the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv)
117 reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to
118 § 54.1-2401. The order of the special conference committee shall become final thirty days after service
119 of the order unless a written request to the board for a hearing is received within such time. If service
120 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.

13. To meet by telephone conference call to consider settlement proposals in matters pending before special conference committees convened pursuant to this section, § 54.1-2919 or § 54.1-3010 or matters referred for formal proceedings pursuant to § 2.2-4020 to a health regulatory board or a panel of the board or to consider modifications of previously issued board orders when such considerations have been requested by either of the parties.

14. *To request and accept from a certified, registered or licensed practitioner, in lieu of disciplinary action, a confidential consent agreement. A confidential consent agreement shall be subject to the confidentiality provisions of § 54.1-2400.2. A confidential consent agreement shall include findings of fact and may include an admission or a finding of a violation. A confidential consent agreement shall not be considered either a notice or order of any health regulatory board, but it may be considered by a board in future disciplinary proceedings. A board shall not enter into a confidential consent agreement if there is probable cause to believe the practitioner has (i) demonstrated gross negligence or intentional misconduct in the care of patients, (ii) caused serious patient harm through negligence or (iii) conducted his practice in such a manner as to be a danger to the health and welfare of his patients or the public. A board shall enter into a confidential consent agreement with a practitioner involving a standard of care violation only once during any 10-year period.*

§ 54.1-2400.2. Confidentiality of information obtained during an investigation or disciplinary proceeding.

A. Any reports, information or records received and maintained by any health regulatory board in connection with possible disciplinary proceedings, including any material received or developed by a board during an investigation or proceeding, shall be strictly confidential. A board may only disclose such confidential information:

1. In *entering a confidential consent agreement under § 54.1-2400 or in a disciplinary proceeding* before a board or in any subsequent trial or appeal of an action or order;

2. To regulatory authorities concerned with granting, limiting or denying licenses, certificates or registrations to practice a health profession;

3. To hospital committees concerned with granting, limiting or denying hospital privileges if a final determination regarding a violation has been made;

4. Pursuant to an order of a court of competent jurisdiction *for good cause arising from extraordinary circumstances being shown*;

5. To qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any person is first deleted. Such release shall be made pursuant to a written agreement to ensure compliance with this section; or

6. To the Health Practitioners' Intervention Program within the Department of Health Professions in connection with health practitioners who apply to or participate in the Program.

B. In no event shall confidential information received, maintained or developed by any board, or disclosed by the board to others, pursuant to this section, be available for discovery or court subpoena or introduced into evidence in any ~~medical malpractice suit or other action for damages arising out of the provision of or failure to provide services~~ civil action. This section shall not, however, be construed to inhibit an investigation or prosecution under Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2.

C. Any claim of a physician-patient or practitioner-patient privilege shall not prevail in any investigation or proceeding by any health regulatory board acting within the scope of its authority. The disclosure, however, of any information pursuant to this provision shall not be deemed a waiver of such privilege in any other proceeding.

D. ~~Orders and notices of a board relating to disciplinary action shall be disclosed.~~

~~E.~~ This section shall not prohibit the Director of the Department of Health Professions, after consultation with the relevant health regulatory board president or his designee, from disclosing to the

182 Attorney General, or the appropriate attorney for the Commonwealth, investigatory information which
183 indicates a possible violation of any provision of law relating to the manufacture, distribution,
184 dispensing, prescribing or administration of drugs, other than drugs classified as Schedule VI drugs and
185 devices, by any individual regulated by any health regulatory board.

186 FE. This section shall not prohibit the Director of the Department of Health Professions from
187 disclosing matters listed in subdivision A 1, A 2, or A 3 of § 54.1-2909; from making the reports of
188 aggregate information and summaries required by § 54.1-2400.3; or from disclosing the information
189 required to be made available to the public pursuant to § 54.1-2910.1.

190 GF. Orders and notices of the health regulatory boards relating to disciplinary actions shall be
191 disclosed.

192 HG. Any person found guilty of the unlawful disclosure of confidential information possessed by a
193 health regulatory board shall be guilty of a Class 1 misdemeanor.

194 § 54.1-2400.3. Disciplinary actions to be reported.

195 In addition to the information required by § 54.1-114, the Director shall include in the Department's
196 biennial report *for each of the health regulatory boards* the number of reports or complaints of
197 misconduct received and the investigations, charges, findings, and sanctions resulting therefrom. The
198 report shall reflect the categories of allegations, kinds of complaints and the rates of disciplinary activity
199 for the various regulated professions and the health regulatory boards having jurisdiction; summaries
200 explaining the reported data shall be included with the report. *Further, the report shall contain for each*
201 *profession regulated by a health regulatory board the number of cases in which a sanction was*
202 *imposed. Cases involving sanctions shall be reported by category of violation for each profession, and 1*
203 *reported category shall be cases involving standard of care violations.* The information shall be reported
204 only in the aggregate without reference to any individual's name or identifying particulars. In those
205 portions of this report relating to the Board of Medicine, the Director shall include a summary of the
206 data required by § 54.1-2910.1.

207 *The Director shall also include in the Department's biennial report for each health regulatory board*
208 *(i) case processing time standards for resolving disciplinary cases, (ii) an analysis of the percentage of*
209 *cases resolved during the last 2 fiscal years that did not meet such standards, (iii) a 6-year trend*
210 *analysis of the time required to process, investigate, and adjudicate cases, and (iv) a detailed reporting*
211 *of staffing levels for the 6-year period for each job classification that supports the disciplinary process.*
212 *However, the initial biennial report shall require a 4-year trend analysis of the time required to process,*
213 *investigate, and adjudicate cases and a detailed reporting of staffing levels for the 4-year period for*
214 *each job classification that supports the disciplinary process.*

215 § 54.1-2400.4. Mental health service providers duty to report; immunity; penalty.

216 A. Any mental health service provider, as defined in § 54.1-2400.1, shall, upon learning of evidence
217 that indicates a reasonable probability that another mental health service provider is or may be guilty of
218 a violation of standards of conduct as defined in statute or regulation, ~~advise his patient of his right to~~
219 ~~report such misconduct to the Department of Health Professions, hereinafter referred to as the~~
220 ~~"Department." No mental health service provider shall be obligated to report any matter to the~~
221 ~~Department if such provider has actual notice that the matter has already been reported to the~~
222 ~~Department.~~

223 B. The mental health service provider shall provide relevant information to the patient, including, but
224 not limited to, the Department's toll-free complaint hotline number for consumer complaints and written
225 information, published by the Department of Health Professions, explaining how to file a report. The
226 mental health service provider shall document in the patient's record the alleged misconduct, the
227 category of licensure or certification, and approximate dates of treatment, if known, of the mental health
228 service provider who will be the subject of the report, and the action taken by the mental health service
229 provider to inform the patient of his right to file a complaint with the Department of Health Professions.

230 C. Any mental health service provider informing a patient of his right to file a complaint against a
231 regulated person and providing the information reporting misconduct as required by this section shall be
232 immune from any civil liability or criminal prosecution resulting therefrom unless such person acted in
233 bad faith or with malicious intent.

234 DC. Notwithstanding any other provision of law, any person ~~required to inform a patient of his right~~
235 ~~to file a complaint against a regulated person who fails to make a report to the Department~~ pursuant to
236 this section ~~who fails to do so~~ shall be subject to a civil penalty not to exceed \$1005,000. *Any person*
237 *assessed a civil penalty pursuant to this section shall not receive a license, registration or certification*
238 *or renewal of such from any health regulatory board unless such penalty has been paid.*

239 § 54.1-2401. Monetary penalty.

240 Any person licensed, registered or certified by any health regulatory board who violates any
241 provision of statute or regulation pertaining to that board and who is not criminally prosecuted, may be
242 subject to the monetary penalty provided in this section. If the board or any special conference
243 committee determines that a respondent has violated any provision of statute or regulation pertaining to

the board, it shall determine the amount of any monetary penalty to be imposed for the violation, which shall not exceed \$1,0005,000 for each violation. The penalty may be sued for and recovered in the name of the Commonwealth. All such monetary penalties shall be deposited in the Literary Fund.

§ 54.1-2408.2. *Three-year minimum period for reinstatement after revocation.*

When the certificate, registration or license of any person certified, registered or licensed by 1 of the health regulatory boards has been revoked, the board may, after 3 years and upon the payment of a fee prescribed by the Board, consider an application for and grant a new certificate, registration or license in the same manner as the original certificates, registrations or licenses are granted. The granting of a new certificate, registration or license shall require the affirmative vote of three-fourths of the members at a meeting. In the discretion of the board, such certificate, registration or license may be granted without further examination.

§ 54.1-2505. Powers and duties of Director of Department.

The Director of the Department shall have the following powers and duties:

1. To supervise and manage the Department;
2. To perform or consolidate such administrative services or functions as may assist the operation of the boards;
3. To prepare, approve and submit to the Governor, after consultation with the boards, all requests for appropriations and be responsible for all expenditures pursuant to appropriations;
4. To provide such office facilities as will allow the boards to carry out their duties;
5. To employ personnel as required for the proper performance of the responsibilities of the Department subject to Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2 within the limits of appropriations made by law;
6. To receive all complaints made against regulated health care professionals;
7. To develop administrative policies and procedures governing the receipt and recording of complaints;
8. To monitor the status of actions taken under the auspices of the boards regarding complaints until the closure of each case;
9. To provide investigative and such other services as needed by the boards to enforce their respective statutes and regulations;
10. To provide staff to assist in the performance of the duties of the Board of Health Professions;
11. To collect and account for all fees to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the regulatory boards, the Health Practitioners' Intervention Program, and the Department and Board of Health Professions shall be paid;
12. To make and enter into all contracts and agreements necessary or incidental to the performance of his duties and the execution of his powers, including, but not limited to, contracts with the United States, other states, agencies and governmental subdivisions of the Commonwealth;
13. To accept grants from the United States government, its agencies and instrumentalities, and any other source. The Director shall have the power to comply with conditions and execute agreements as may be necessary, convenient or desirable;
14. To promulgate and revise regulations necessary for the administration of the Department and such regulations as are necessary for the implementation of the Health Practitioners' Intervention Program pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of this title and subdivision 19 of this section;
15. To report promptly, after consultation with the presiding officer of the appropriate health regulatory board or his designee, to the Attorney General or the appropriate attorney for the Commonwealth any information the Department obtains which, upon appropriate investigation, indicates, in the judgment of the Director, that a person licensed by any of the health regulatory boards has violated any provision of criminal law relating to manufacturing, distributing, dispensing, prescribing or administering drugs other than drugs classified as Schedule VI drugs. When necessary, the Attorney General or the attorney for the Commonwealth shall request that the Department of Health Professions or the Department of State Police conduct any subsequent investigation of such report. For the purpose of this section, the terms manufacturing, distributing, dispensing, prescribing or administering drugs shall not include minor administrative or clerical errors which do not affect the inventory of drugs required by Chapter 34 (§ 54.1-3400 et seq.) of this title and do not indicate a pattern of criminal behavior;
16. To keep records of the names and qualifications of registered, certified or licensed persons;
17. To exercise other powers and perform other duties required of the Director by the Governor;
18. To issue subpoenas in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) for any informal fact finding or formal proceeding within the jurisdiction of the Department or any regulatory board;
19. To establish, and revise as necessary, a comprehensive health practitioners' intervention program pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of this title; and
20. To establish, and revise as necessary, with such federal funds, grants, or general funds as may be

appropriated or made available for this program, the Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of this title.

21. To assess a civil penalty against any person who is not licensed by a health regulatory board for failing to report a violation pursuant to § 54.1-2906 or § 54.1-2909.

§ 54.1-2506. Enforcement of laws by Director and investigative personnel; authority of investigative personnel.

A. The Director and investigative personnel appointed by him shall be sworn to enforce the statutes and regulations pertaining to the Department, the Board, and the health regulatory boards and shall have the authority to investigate any violations of those statutes and regulations and to the extent otherwise authorized by law inspect any office or facility operated, owned or employing individuals regulated by any health regulatory board. The Director or his designee shall have the power to subpoena witnesses and issue subpoenas requiring the production of patient records, business records, papers, and physical or other evidence in the course of any investigation.

B. All investigative personnel shall be vested with the authority to (i) administer oaths or affirmations for the purpose of receiving complaints of violations of this subtitle, (ii) serve and execute any warrant, paper or process issued by any court or magistrate, the Board, the Director or in his absence a designated subordinate, or by any regulatory board under the authority of the Director, and (iii) request and receive criminal history information under the provisions of § 19.2-389.

C. The Director shall have the authority to issue summonses for violations of statutes and regulations governing the unlicensed practice of professions regulated by the Department. The Director may delegate such authority to investigators appointed by him. In the event a person issued such a summons fails or refuses to discontinue the unlawful acts or refuses to give a written promise to appear at the time and place specified in the summons, the investigator may appear before a magistrate or other issuing authority having jurisdiction to obtain a criminal warrant pursuant to § 19.2-72.

§ 54.1-2506.01. Investigation of reported violations.

The Department shall investigate all complaints that are within the jurisdiction of the relevant health regulatory board received from (i) the general public and (ii) all reports received pursuant to §§ 54.1-2400.4, 54.1-2709.3, 54.1-2709.4, 54.1-2906, 54.1-2908, or § 54.1-2909.

§ 54.1-2906. Hospitals and other health care institutions required to report disciplinary actions against and certain disorders of health professionals; immunity from liability.

A. The chief administrative officer and the chief of staff of every hospital or other health care institution in the Commonwealth shall report *within 30 days* to the appropriate board the following information regarding any person licensed by a health regulatory board unless exempted under subsection D:

1. Any information of which he may become aware in his official capacity indicating that such a health professional is in need of treatment or has been committed or admitted as a patient, either at his institution or at any other health care institution, for treatment of substance abuse or a psychiatric illness which may render the health professional a danger to himself, the public or his patients.

2. Any information of which he may become aware in his official capacity indicating a *reasonable probability* that such health professional may ~~be guilty of~~ *have engaged in* unethical, fraudulent or unprofessional conduct as defined by the pertinent licensing statutes and regulations.

3. Any disciplinary action, including but not limited to denial or termination of employment, denial or termination of privileges or restriction of privileges, while under investigation or during disciplinary proceedings, taken or begun by the institution as a result of conduct involving *intentional or negligent conduct that causes or is likely to cause injury to a patient or patients*, professional ethics, professional incompetence, moral turpitude, or substance abuse.

4. The voluntary resignation from the staff of the health care institution or voluntary restriction or expiration of privileges at the institution of any health professional while such health professional is under investigation or is the subject of disciplinary proceedings taken or begun by the institution or a committee thereof for any reason related to possible *intentional or negligent conduct that causes or is likely to cause injury to a patient or patients*, medical incompetence, unprofessional conduct, moral turpitude, mental or physical impairment, or substance abuse.

Any report required by this section shall be in writing directed to the secretary of the appropriate board, shall give the name and address of the person who is the subject of the report and shall fully describe the circumstances surrounding the facts required to be reported. *The report shall at a minimum include, but shall not be limited to, the following information:*

(a) the names of individuals with knowledge about the facts required to be reported;

(b) the names of individuals from whom the hospital or health care institution sought information to substantiate the facts required to be reported;

(c) all relevant medical records shall be attached to the report if patient care is at issue; and

(d) incident reports or other contemporaneous documentation of factual events regarding prohibited conduct.

The reporting hospital or health care institution shall give the health professional who is the subject of the report an opportunity to review the report and submit a separate report if he disagrees with the substance of the report. The reporting hospital or health care institution shall give notice to the Board that they have submitted a report to the National Practitioner Data Bank under the Health Care Quality Improvement Act, 42 U.S.C. 11101. Any report required by this section concerning the commitment or admission of such health professional as a patient shall be made within five days of when the chief administrative officer learns of such commitment or admission.

~~The~~ This section shall not be construed to require the hospital or health care institution to submit any proceedings, minutes, records or reports that are privileged under § 8.01-581.17, except that the provisions of § 8.01-581.17 shall not bar (i) any ~~initial~~ report required by this section or (ii) any requested medical records which are necessary to investigate unprofessional conduct reported pursuant to this subtitle or unprofessional conduct that should have been reported pursuant to this subtitle. *Under no circumstances shall compliance with this section be construed to waive or limit the privilege provided in § 8.01-581.17.*

B. The State Health Commissioner shall report to the appropriate board any information of which the Department of Health may become aware in the course of its duties indicating that such a health professional may be guilty of fraudulent, unethical or unprofessional conduct as defined by the pertinent licensing statutes and regulations.

C. Any person making a report required by this section, *providing information pursuant to an investigation* or testifying in a judicial or administrative proceeding as a result of such report shall be immune from any civil liability alleged to have resulted therefrom unless such person acted in bad faith or with malicious intent.

D. Medical records or information learned or maintained in connection with an alcohol or drug prevention function which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall be exempt from the reporting requirements of this section to the extent that such reporting is in violation of 42 U.S.C. § 290dd-2 or regulations promulgated thereunder.

E. *Any person who fails to make a report to the health regulatory board as required by this section shall be subject to a civil penalty not to exceed \$25,000 assessed by the Director. The Director shall report the assessment of such civil penalty to the Commissioner of the Department of Health. Any person assessed a civil penalty pursuant to this section shall not receive a license or certification or renewal of such unless such penalty has been paid pursuant to § 32.1-125.01. The Medical College of Virginia Hospitals and the University of Virginia Hospitals shall not receive certification pursuant to § 32.1-137 and § 32.1-102.1 et seq. unless such penalty has been paid.*

§ 54.1-2908. Reports of disciplinary action against health professionals; immunity from liability.

A. The president of the Medical Society of Virginia, the Osteopathic Medical Association, the Virginia Chiropractors Association, Inc., and the Virginia Podiatric Medical Association shall report *within 30 days* to the Board of Medicine any disciplinary action taken by his organization against any member of his organization licensed under this chapter if such disciplinary action is a result of conduct involving *intentional or negligent conduct that causes or is likely to cause injury to a patient or patients*, professional ethics, professional incompetence, moral turpitude, drug addiction or alcohol abuse.

B. The president of any association, society, academy or organization shall report *within 30 days* to the Board of Medicine any disciplinary action taken against any of its members licensed under this chapter if such disciplinary action is a result of conduct involving *intentional or negligent conduct that causes or is likely to cause injury to a patient or patients*, professional ethics, professional incompetence, moral turpitude, drug addiction or alcohol abuse.

C. Any report required by this section shall be in writing directed to the Board of Medicine, shall give the name and address of the person who is the subject of the report and shall fully describe the circumstances surrounding the facts required to be reported. *The report shall at a minimum include, but shall not be limited to, the following information:*

- (a) *the names of individuals with knowledge about the facts required to be reported;*
- (b) *the names of individuals from whom the hospital or health care institution sought information to substantiate the facts required to be reported;*
- (c) *all relevant medical records shall be attached to the report if patient care is at issue; and*
- (d) *incident reports or other contemporaneous documentation of factual events regarding prohibited conduct.*

The reporting hospital or health care institution shall give the health professional who is the subject of the report an opportunity to review the report and submit a separate report if he disagrees with the substance of the report. The reporting hospital or health care institution shall give notice to the Board that they have submitted a report to the National Practitioner Data Bank under the Health Care Quality Improvement Act, 42 U.S.C. 11101.

D. Any person making a report required by this section, *providing information pursuant to an*

428 *investigation* or testifying in a judicial or administrative proceeding as a result of such report shall be
429 immune from any civil liability resulting therefrom unless such person acted in bad faith or with
430 malicious intent.

431 E. In the event that any organization enumerated in subsection A or any component thereof receives
432 a complaint against one of its members, such organization may, in lieu of considering disciplinary action
433 against such member, request that the Board investigate the matter pursuant to this chapter, in which
434 event any person participating in the decision to make such a request or testifying in a judicial or
435 administrative proceeding as a result of such request shall be immune from any civil liability alleged to
436 have resulted therefrom unless such person acted in bad faith or with malicious intent.

437 *F. Any person who fails to make a report to the Board as required by this section shall be subject to*
438 *a civil penalty not to exceed \$5,000. Any person assessed a civil penalty pursuant to this section shall*
439 *not receive a license, registration or certification or renewal of such from any health regulatory board*
440 *unless such penalty has been paid.*

441 § 54.1-2909. Further reporting requirements.

442 A. The following matters shall be reported *within 30 days of their occurrence* to the Board:

443 1. Any disciplinary action taken against a person licensed under this chapter in another state or in a
444 federal health institution or voluntary surrender of a license in another state while under investigation;

445 2. Any malpractice judgment against a person licensed under this chapter;

446 3. Any ~~incident of two settlements~~ *settlement of a malpractice claim* against ~~one~~ a person
447 licensed under this chapter ~~within a three-year period~~; and

448 4. Any evidence that indicates a reasonable probability that a person licensed under this chapter is or
449 may be professionally incompetent; ~~guilty of~~; *has engaged in intentional or negligent conduct that*
450 *causes or it likely to cause injury to a patient or patients; has engaged in unprofessional conduct; or*
451 *may be mentally or physically unable to engage safely in the practice of his profession.*

452 *The reporting requirements set forth in this section shall be met if these matters are reported to the*
453 *National Practitioner Data Bank under the Health Care Quality Improvement Act, 42 U.S.C. 11101, and*
454 *notice that such a report has been submitted is provided to the Board.*

455 B. The following persons and entities are subject to the reporting requirements set forth in this
456 section:

457 1. Any person licensed under this chapter who is the subject of a disciplinary action, settlement
458 judgment or evidence for which reporting is required pursuant to this section;

459 2. Any other person licensed under this chapter, except as provided in the protocol agreement entered
460 into by the Medical Society of Virginia and the Board for the Operation of the Impaired Physicians
461 Program;

462 3. The presidents of all professional societies in the Commonwealth, and their component societies
463 whose members are regulated by the Board, except as provided for in the protocol agreement entered
464 into by the Medical Society of Virginia and the Board for the Operation of the Impaired Physicians
465 Program;

466 4. All health care institutions licensed by the Commonwealth;

467 5. The malpractice insurance carrier of any person who is the subject of a judgment or ~~of two~~
468 ~~settlements within a three-year period. The carrier shall not be required to report any settlements except~~
469 ~~those in which it has participated which have resulted in at least two settlements on behalf of one~~
470 ~~person during a three-year period~~ *settlement*; and

471 6. Any health maintenance organization licensed by the Commonwealth.

472 C. No person or entity shall be obligated to report any matter to the Board if the person or entity has
473 actual notice that the matter has already been reported to the Board.

474 D. Any report required by this section shall be in writing directed to the Board, shall give the name
475 and address of the person who is the subject of the report and shall describe the circumstances
476 surrounding the facts required to be reported. *Under no circumstances shall compliance with this section*
477 *be construed to waive or limit the privilege provided in § 8.01-581.17.*

478 E. Any person making a report required by this section, *providing information pursuant to an*
479 *investigation* or testifying in a judicial or administrative proceeding as a result of such report shall be
480 immune from any civil liability or criminal prosecution resulting therefrom unless such person acted in
481 bad faith or with malicious intent.

482 F. The clerk of any circuit court or any district court in the Commonwealth shall report to the Board
483 the conviction of any person known by such clerk to be licensed under this chapter of any (i)
484 misdemeanor involving a controlled substance, marijuana or substance abuse or involving an act of
485 moral turpitude or (ii) felony.

486 *G. Any person who fails to make a report to the Board as required by this section shall be subject to*
487 *a civil penalty not to exceed \$5,000. The Director shall report the assessment of such civil penalty to*
488 *the Commissioner of the Department of Health or the Commissioner of Insurance at the State*
489 *Corporation Commission. Any person assessed a civil penalty pursuant to this section shall not receive*

a license, registration or certification or renewal of such unless such penalty has been paid.

§ 54.1-2911. Board; membership; terms of office; change of residence; executive director; etc.

The Board of Medicine shall consist of one medical physician from each congressional district, one osteopathic physician, one podiatrist, one chiropractor, and four citizen members. No two citizen members shall reside in the same congressional district. Citizen members shall have all voting and participation rights of other members. The term of office of the members of the Board shall be four years. If any medical physician member of the Board ceases to reside in the district from which he was appointed, except by reason of redistricting, his office shall be deemed vacant.

The officers of the Board shall be a president, vice-president and a secretary, who shall also act as treasurer, who shall be members of and selected by the Board.

Regular meetings of the Board shall be held at such times and places as prescribed by the Board. Special meetings may be held upon the call of the president and any eleven members. Twelve members of the Board shall constitute a quorum.

The Board may establish an executive committee composed of the president, vice-president, the secretary and four other members of the Board appointed by the president. *The executive committee shall include at least 2 citizen members.* In the absence of the Board, the executive committee shall have full powers to take any action and conduct any business authorized by this chapter. Five members of the executive committee shall constitute a quorum. Any actions or business conducted by the executive committee shall be acted upon by the full Board as soon as practicable.

There shall be an executive director for the Board of Medicine who shall be licensed or eligible for licensure in the Commonwealth as a physician.

§ 54.1-2915. Refusal; suspension or revocation; other disciplinary actions.

A. The Board may refuse to admit a candidate to any examination; refuse to issue a certificate or license to any applicant; ~~and may ; censure or reprimand any person; place any person on probation for such time as it may designate; suspend any person for a stated period of time or indefinitely; or revoke any certificate or license or censure or reprimand any person or place him on probation for such time as it may designate for any of the following causes:~~

1. False statements or representations or fraud or deceit in obtaining admission to the practice, or fraud or deceit in the practice of any branch of the healing arts;

2. Substance abuse rendering him unfit for the performance of his professional obligations and duties;

3. Unprofessional conduct as defined in this chapter;

4. ~~Gross ignorance or carelessness in his practice, or gross malpractice~~ *Intentional or negligent conduct in the practice of any branch of the healing arts that causes or is likely to cause injury to a patient or patients;*

5. Mental or physical incapacity or incompetence to practice his profession with safety to his patients and the public; or

6. Restriction of a license to practice a branch of the healing arts in another state, the District of Columbia, a United States possession or territory, or a foreign jurisdiction.

The Board shall refuse to admit a candidate to any examination and shall refuse to issue a certificate or license to any applicant if the candidate or applicant has had his certificate or license to practice a branch of the healing arts revoked or suspended, and has not had his certificate or license to so practice reinstated, in another state, the District of Columbia, a United States possession or territory, or a foreign jurisdiction.

B. The Board may direct any licensee under a disciplinary order to furnish it at such intervals as it may require, evidence that he is not practicing his profession in violation of this chapter. In addition, when the Board has probable cause to believe the licensee unable to practice the healing arts with reasonable skill and safety to patients because of excessive use of alcohol or drugs or physical or mental illness, the Board, after preliminary investigation by informal conference, may direct that the licensee submit to a mental or physical examination by physicians designated by it. Failure of the licensee to submit to the examination shall constitute grounds for disciplinary action. Any licensee affected by this subsection shall be afforded reasonable opportunity to demonstrate that he is competent to practice the healing arts with reasonable skill and safety to patients.

§ 54.1-3480. Refusal, revocation or suspension.

A. The Board may refuse to admit a candidate to any examination, may refuse to issue a license to any applicant, and may suspend for a stated period of time or indefinitely or revoke any license or censure or reprimand any person or place him on probation for such time as it may designate for any of the following causes:

1. False statements or representations or fraud or deceit in obtaining admission to the practice, or fraud or deceit in the practice of physical therapy;

2. Substance abuse rendering him unfit for the performance of his professional obligations and duties;

3. Unprofessional conduct as defined in this chapter;

551 4. ~~Gross ignorance or carelessness in his practice, or gross malpractice~~*Intentional or negligent*
552 *conduct that causes or is likely to cause injury to a patient or patients;*

553 5. Mental or physical incapacity or incompetence to practice his profession with safety to his patients
554 and the public;

555 6. Restriction of a license to practice physical therapy in another state, the District of Columbia, a
556 United States possession or territory, or a foreign jurisdiction;

557 7. Conviction in any state, territory or country of any felony or of any crime involving moral
558 turpitude;

559 8. Adjudged legally incompetent or incapacitated in any state if such adjudication is in effect and the
560 person has not been declared restored to competence or capacity; or

561 9. Conviction of an offense in another state, territory or foreign jurisdiction, which if committed in
562 Virginia would be a felony. Such conviction shall be treated as a felony conviction under this section
563 regardless of its designation in the other state, territory or foreign jurisdiction.

564 B. The Board shall refuse to admit a candidate to any examination and shall refuse to issue a license
565 to any applicant if the candidate or applicant has had his certificate or license to practice physical
566 therapy revoked or suspended, and has not had his certificate or license to so practice reinstated, in
567 another state, the District of Columbia, a United States possession or territory, or a foreign jurisdiction.

568 C. The Board may direct any licensee under a disciplinary order to furnish it at such intervals as it
569 may require, evidence that he is not practicing his profession in violation of this chapter. In addition,
570 when the Board has probable cause to believe the licensee is unable to practice physical therapy with
571 reasonable skill and safety to patients because of excessive use of alcohol or drugs or physical or mental
572 illness, the Board, after preliminary investigation by informal conference, may direct that the licensee
573 submit to a mental or physical examination by physicians designated by it. Failure of the licensee to
574 submit to the examination shall constitute grounds for disciplinary action. Any licensee affected by this
575 subsection shall be afforded reasonable opportunity to demonstrate that he is competent to practice
576 physical therapy with reasonable skill and safety to patients.

577 **2. That §§ 54.1-2921 and 54.1-3218 of the Code of Virginia are repealed.**

578 **3. That the provisions concerning reinstatement in effect prior to July 1, 2003, shall apply to**
579 **individuals who have had their licenses revoked by a health regulatory board prior to the effective**
580 **date of this act. Every license revoked after the effective date of this act shall be subject to all of**
581 **the provisions of this act.**

582 **4. That the Joint Legislative Audit and Review Commission (JLARC) shall study the Board of**
583 **Medicine's implementation of the disciplinary procedures of the act. All agencies of the**
584 **Commonwealth shall provide assistance and full access to the disciplinary records of the health**
585 **regulatory boards to JLARC for this study, upon request. JLARC staff shall complete its study by**
586 **November 30, 2006, and the chairman shall submit an executive summary of JLARC's findings**
587 **and recommendations no later than the first day of the 2007 Regular Session of the General**
588 **Assembly to the Division of Legislative Automated Systems. The executive summary shall state**
589 **whether JLARC intends to submit a document of its findings and recommendations to the**
590 **Governor and the 2007 Regular Session of the General Assembly. The executive summary and the**
591 **document shall be submitted and provided in the procedures of the Division of Legislative**
592 **Automated Systems for the processing of legislative documents and reports and shall be posted on**
593 **the General Assembly's website.**