

# VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

## CHAPTER 163

*An Act to amend and reenact §§ 54.1-2912, 54.1-2914, 54.1-2915, and 54.1-2951.3 of the Code of Virginia, and to repeal § 54.1-2916 of the Code of Virginia, relating to health professions; unprofessional conduct.*

[H 1939]

Approved March 20, 2005

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 54.1-2912, 54.1-2914, 54.1-2915, and 54.1-2951.3 of the Code of Virginia are amended and reenacted as follows:**

§ 54.1-2912. Nominations.

Nominations may be made for the medical physicians from a list of three names submitted to the Governor by the Medical Society of Virginia; ~~the clinical psychologist from a list of three names submitted by the Virginia Academy of Clinical Psychologists;~~ and the osteopathic physician, podiatrist and chiropractor members, respectively, from a list of at least three names submitted by June 1 of each year by their respective state societies. In no case shall the Governor be bound to make any appointment from among the nominees of the respective societies. The Governor may notify the society, which may make nominations, of any professional vacancy other than by expiration among the members of the Board representing the particular profession and like nominations may be made for the filling of the vacancy.

§ 54.1-2914. Sale of controlled substances and medical devices or appliances; requirements for vision care services.

A. Any practitioner of the healing arts regulated by the Board shall be considered guilty of unprofessional conduct if he:

1. Undertakes in any manner or by any means whatsoever to procure or perform or to aid or abet in procuring or performing a criminal abortion;

2. Engages in the practice of any of the healing arts under a false or assumed name, or impersonates another practitioner of a like, similar or different name;

3. Prescribes or dispenses any controlled substance with intent or knowledge that it will be used otherwise than medicinally, or for accepted therapeutic purposes, or with intent to evade any law with respect to the sale, use or disposition of such drug;

4. Violates provisions of this chapter on division of fees or practices any branch of the healing arts in violation of the provisions of this chapter;

5. Knowingly and willfully commits any act which is a felony under the laws of this Commonwealth or the United States, or any act which is a misdemeanor under such laws and involves moral turpitude;

6. Aids or abets, has professional connection with, or lends his name to any person known to him to be practicing illegally any of the healing arts;

7. Conducts his practice in a manner contrary to the standards of ethics of his branch of the healing arts;

8. Conducts his practice in such a manner as to be a danger to the health and welfare of his patients or to the public;

9. Is unable to practice with reasonable skill or safety because of illness or substance abuse;

10. Publishes in any manner an advertisement relating to his professional practice which contains a claim of superiority or violates Board regulations governing advertising;

11. Performs any act likely to deceive, defraud or harm the public;

12. Violates any provision of statute or regulation, state or federal, relating to the manufacture, distribution, dispensing or administration of drugs;

13. Violates or cooperates with others in violating any of the provisions of this chapter or regulations of the Board; or

14. Engages in sexual contact with a patient concurrent with and by virtue of the practitioner/patient relationship or otherwise engages at any time during the course of the practitioner/patient relationship in conduct of a sexual nature that a reasonable patient would consider lewd and offensive.

B. A practitioner of the healing arts shall not engage in selling controlled substances unless he is licensed to do so by the Board of Pharmacy. However, this prohibition shall not apply to a doctor of medicine, osteopathy or podiatry who administers controlled substances to his patients or provides controlled substances to his patient in a bona fide medical emergency or when pharmaceutical services are not available. Practitioners who sell or dispense controlled substances shall be subject to inspection by the Department of Health Professions to ensure compliance with Chapters 33 (§ 54.1-3300 et seq.) and 34 (§ 54.1-3400 et seq.) of this title and the Board of Pharmacy's regulations. This subsection shall

not apply to physicians acting on behalf of the Virginia Department of Health or local health departments.

€ B. A practitioner of the healing arts who may lawfully sell medical appliances or devices shall not sell such appliances or devices to persons who are not his own patients and shall not sell such articles to his own patients either for his own convenience or for the purpose of supplementing his income. This subsection shall not apply to physicians acting on behalf of the Virginia Department of Health or local health departments.

Ð C. A practitioner of the healing arts may, from within the practitioner's office, engage in selling or promoting the sale of eyeglasses and may dispense contact lenses. Only those practitioners of the healing arts who engage in the examination of eyes and prescribing of eyeglasses may engage in the sale or promotion of eyeglasses. Practitioners shall not employ any unlicensed person to fill prescriptions for eyeglasses within the practitioner's office except as provided in subdivision 6 of § 54.1-2901. A practitioner may also own, in whole or in part, an optical dispensary located adjacent to or at a distance from his office.

£ D. Any practitioner of the healing arts engaging in the examination of eyes and prescribing of eyeglasses shall give the patient a copy of any prescription for eyeglasses and inform the patient of his right to have the prescription filled at the establishment of his choice. No practitioner who owns, in whole or in part, an establishment dispensing eyeglasses shall make any statement or take any action, directly or indirectly, that infringes on the patient's right to have a prescription filled at an establishment other than the one in which the practitioner has an ownership interest.

Disclosure of ownership interest by a practitioner as required by § 54.1-2964 or participation by the practitioner in contractual arrangements with third-party payors or purchasers of vision care services shall not constitute a violation of this subsection.

§ 54.1-2915. Unprofessional conduct; grounds for refusal or disciplinary action.

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

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. 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;

7. *Undertaking in any manner or by any means whatsoever to procure or perform or aid or abet in procuring or performing a criminal abortion;*

8. *Engaging in the practice of any of the healing arts under a false or assumed name, or impersonating another practitioner of a like, similar, or different name;*

9. *Prescribing or dispensing any controlled substance with intent or knowledge that it will be used otherwise than medicinally, or for accepted therapeutic purposes, or with intent to evade any law with respect to the sale, use, or disposition of such drug;*

10. *Violating provisions of this chapter on division of fees or practicing any branch of the healing arts in violation of the provisions of this chapter;*

11. *Knowingly and willfully committing an act that is a felony under the laws of the Commonwealth or the United States, or any act that is a misdemeanor under such laws and involves moral turpitude;*

12. *Aiding or abetting, having professional connection with, or lending his name to any person known to him to be practicing illegally any of the healing arts;*

13. *Conducting his practice in a manner contrary to the standards of ethics of his branch of the healing arts;*

14. *Conducting his practice in such a manner as to be a danger to the health and welfare of his patients or to the public;*

15. *Inability to practice with reasonable skill or safety because of illness or substance abuse;*

16. *Publishing in any manner an advertisement relating to his professional practice that contains a claim of superiority or violates Board regulations governing advertising;*

17. *Performing any act likely to deceive, defraud, or harm the public;*

18. *Violating any provision of statute or regulation, state or federal, relating to the manufacture, distribution, dispensing, or administration of drugs;*

19. *Violating or cooperating with others in violating any of the provisions of Chapters 1 (§ 54.1-100 et seq.), 24 (§ 54.1-2400 et seq.) and this chapter or regulations of the Board;*

20. *Engaging in sexual contact with a patient concurrent with and by virtue of the practitioner and*

*patient relationship or otherwise engaging at any time during the course of the practitioner and patient relationship in conduct of a sexual nature that a reasonable patient would consider lewd and offensive;*

*20. Conviction in any state, territory, or country of any felony or of any crime involving moral turpitude; or*

*21. Adjudication of legal incompetence or incapacity in any state if such adjudication is in effect and the person has not been declared restored to competence or capacity.*

*B. The commission or conviction of an offense in another state, territory, or country, which if committed in Virginia would be a felony, shall be treated as a felony conviction or commission under this section regardless of its designation in the other state, territory, or country.*

C. 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.

§ 54.1-2951.3. Restricted volunteer license for certain physician assistants.

A. The Board may issue a restricted volunteer license to a physician assistant who meets the qualifications for licensure for physician assistants. The Board may refuse issuance of licensure pursuant to §§ 54.1-2915 and ~~54.1-2916~~.

B. A person holding a restricted volunteer license under this section shall:

1. Only practice in public health or community free clinics approved by the Board;  
2. Only treat patients who have no insurance or who are not eligible for financial assistance for medical care; and

3. Not receive remuneration directly or indirectly for practicing as a physician assistant.

C. A physician assistant with a restricted volunteer license issued under this section shall only practice as a physician assistant and perform certain delegated acts which constitute the practice of medicine to the extent and in the manner authorized by the Board if:

1. A physician who supervises physician assistants is available; or  
2. The physician supervising any physician assistant periodically reviews the relevant patient records.

D. A restricted volunteer license granted pursuant to this section shall be issued to the physician assistant without charge, shall expire twelve months from the date of issuance, and may be renewed annually in accordance with regulations promulgated by the Board.

E. A physician assistant holding a restricted volunteer license issued pursuant to this section is subject to the provisions of this chapter and the regulations promulgated under this chapter unless otherwise provided for in this section.

**2. That § 54.1-2916 of the Code of Virginia is repealed.**