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SENATE BILL NO. 1075

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Education and Health
on January 29, 2009)

(Patron Prior to Substitute—Senator Howell)

A BILL to amend and reenact §§ 54.1-3202, 54.1-3204, and 54.1-3301 of the Code of Virginia, relating to the practice of optometry.

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-3202, 54.1-3204, and 54.1-3301 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-3202. Exemptions.

This chapter shall not apply to:

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

2. Any optometrist rendering free health care to an underserved population in Virginia who (i) does not regularly practice optometry in Virginia, (ii) holds a current valid license or certificate to practice optometry in another state, territory, district or possession of the United States, (iii) volunteers to provide free health care in an underserved area of this Commonwealth under the auspices of a publicly supported all volunteer, nonprofit organization that sponsors the provision of health care to populations of underserved people, (iv) files a copy of his license or certification in such other jurisdiction with the Board, (v) notifies the Board at least five business 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 optometrist 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. However, the Board shall allow an optometrist who meets the above criteria to provide volunteer services without prior notice for a period of up to three days, provided the nonprofit organization verifies that the practitioner has a valid, unrestricted license in another state.

§ 54.1-3204. Prohibited acts.

It shall be unlawful for any person:

1. To practice optometry in this Commonwealth without holding a license issued by the Board. Practicing or offering to practice optometry, or the public representation of being qualified to practice the same by any person not authorized to practice optometry, shall be sufficient evidence of a violation of the law.

2. To impersonate a licensed optometrist of like or different name.

3. To buy or sell or fraudulently obtain a diploma or license.

4. To do any act for which if he were an optometrist his license could be revoked as provided by this chapter.

5. To possess any trial lenses, trial frames, graduated test cards, appliances or instruments used in the practice of optometry, self-testing devices or eyeglass vending machines for the purpose of fitting or prescribing glasses in the practice of optometry, unless he is or unless he regularly employs on the premises a licensed optometrist or a licensed physician.

6. To publish or cause to be published in any manner an advertisement that is false, deceptive or misleading, contains a claim of professional superiority or violates regulations of the Board governing advertising by optometrists.

7. To sell, provide, furnish, supply or duplicate eyeglasses, or lenses for the correction of vision without the prescription of a licensed physician or licensed optometrist, unless he is the holder of a license to practice optometry or a license to practice medicine under the laws of this Commonwealth.

8. *To sell or dispense contact lenses, including plano or cosmetic lenses, without holding a license issued by the Board. This subdivision shall not apply to a licensed optician operating or working in a retail establishment, when selling or dispensing contact lenses, including plano or cosmetic lenses, upon the valid written prescription of an individual licensed to practice medicine or osteopathy, or a licensed optometrist.*

9. *To dispense, administer, or sell an ophthalmic device containing Schedule III, IV, or VI controlled substances or an over-the-counter medication without holding a license issued by the Board, including TPA certification. An "ophthalmic device" shall mean any device, as defined in the Drug Control Act*

60 (*§ 54.1-3400 et seq.*) customarily used primarily for ophthalmic purposes, including an ophthalmic
61 device classified by the United States Food and Drug Administration as a drug. Nothing in this
62 subsection shall preclude a pharmacist from dispensing an ophthalmic device, as defined in this
63 subsection, upon the written and valid prescription of an optometrist, providing the patient is then
64 advised by the pharmacist to return for follow-up care to the optometrist prescribing the ophthalmic
65 device.

66 The provisions of this section shall be enforced in accordance with this chapter and § 54.1-2506.

67 § 54.1-3301. Exceptions.

68 This chapter shall not be construed to:

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

72 2. Prevent any legally qualified practitioner of dentistry, or veterinary medicine or any prescriber, as
73 defined in § 54.1-3401, acting on behalf of the Virginia Department of Health or local health
74 departments, from administering or supplying to his patients the medicines that he deems proper under
75 the conditions of § 54.1-3303 or from causing drugs to be administered or dispensed pursuant to
76 §§ 32.1-42.1 and 54.1-3408;

77 3. Prohibit the sale by merchants and retail dealers of proprietary medicines as defined in Chapter 34
78 (*§ 54.1-3400 et seq.*) of this title;

79 4. Prevent the operation of automated drug dispensing systems in hospitals pursuant to Chapter 34
80 (*§ 54.1-3400 et seq.*) of this title;

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

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

87 7. Interfere with any legally qualified practitioner of optometry, certified or licensed to use diagnostic
88 pharmaceutical agents, from purchasing, possessing or administering those controlled substances as
89 specified in § 54.1-3221 or interfere with any legally qualified practitioner of optometry certified to
90 prescribe therapeutic pharmaceutical agents from purchasing, possessing, or administering to his own
91 patients those controlled substances as specified in § 54.1-3222 and the TPA formulary, ~~or~~ providing
92 manufacturers' samples of these drugs to his own patients, *or dispensing, administering, or selling*
93 *ophthalmic devices as authorized in § 54.1-3204;*

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

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

102 10. Interfere with any legally qualified practitioner of medicine or osteopathy participating in an
103 indigent patient program offered by a pharmaceutical manufacturer in which the practitioner sends a
104 prescription for one of his own patients to the manufacturer, and the manufacturer donates a stock bottle
105 of the prescription drug ordered at no cost to the practitioner or patient. The practitioner may dispense
106 such medication at no cost to the patient without holding a license to dispense from the Board of
107 Pharmacy. However, the container in which the drug is dispensed shall be labeled in accordance with
108 the requirements of § 54.1-3410, and, unless directed otherwise by the practitioner or the patient, shall
109 meet standards for special packaging as set forth in § 54.1-3426 and Board of Pharmacy regulations. In
110 lieu of dispensing directly to the patient, a practitioner may transfer the donated drug with a valid
111 prescription to a pharmacy for dispensing to the patient. The practitioner or pharmacy participating in
112 the program shall not use the donated drug for any purpose other than dispensing to the patient for
113 whom it was originally donated, except as authorized by the donating manufacturer for another patient
114 meeting that manufacturer's requirements for the indigent patient program. Neither the practitioner nor
115 the pharmacy shall charge the patient for any medication provided through a manufacturer's indigent
116 patient program pursuant to this subdivision. A participating pharmacy may charge a reasonable
117 dispensing or administrative fee to offset the cost of dispensing, not to exceed the comparable allowable
118 fee reimbursed by the Virginia Medicaid program. However, if the patient is unable to pay such fee, the
119 dispensing or administrative fee shall be waived;

120 11. Interfere with any legally qualified practitioner of medicine or osteopathy from providing
121 controlled substances to his own patients in a free clinic without charge when such controlled substances

122 are donated by an entity other than a pharmaceutical manufacturer as authorized by subdivision 10. The
123 practitioner shall first obtain a controlled substances registration from the Board and shall comply with
124 the labeling and packaging requirements of this chapter and the Board's regulations; or

125 12. Prevent any pharmacist from providing free health care to an underserved population in Virginia
126 who (i) does not regularly practice pharmacy in Virginia, (ii) holds a current valid license or certificate
127 to practice pharmacy in another state, territory, district or possession of the United States, (iii) volunteers
128 to provide free health care to an underserved area of this Commonwealth under the auspices of a
129 publicly supported all volunteer, nonprofit organization that sponsors the provision of health care to
130 populations of underserved people, (iv) files a copy of the license or certificate issued in such other
131 jurisdiction with the Board, (v) notifies the Board at least five business days prior to the voluntary
132 provision of services of the dates and location of such service, and (vi) acknowledges, in writing, that
133 such licensure exemption shall only be valid, in compliance with the Board's regulations, during the
134 limited period that such free health care is made available through the volunteer, nonprofit organization
135 on the dates and at the location filed with the Board. The Board may deny the right to practice in
136 Virginia to any pharmacist whose license has been previously suspended or revoked, who has been
137 convicted of a felony or who is otherwise found to be in violation of applicable laws or regulations.
138 However, the Board shall allow a pharmacist who meets the above criteria to provide volunteer services
139 without prior notice for a period of up to three days, provided the nonprofit organization verifies that the
140 practitioner has a valid, unrestricted license in another state.

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