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HOUSE BILL NO. 662

Offered January 13, 2010

Prefiled January 12, 2010

A BILL to amend and reenact §§ 54.1-2400, 54.1-2408, and 54.1-2409 of the Code of Virginia, relating to disciplinary authority of health regulatory boards.

Patron—Morrissey

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2400, 54.1-2408, and 54.1-2409 of the Code of Virginia are amended and reenacted as follows:

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

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

1. To establish the qualifications for registration, certification, licensure or the issuance of a multistate licensure privilege in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.

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

3. To register, certify, license or issue a multistate licensure privilege to qualified applicants as practitioners of the particular profession or professions regulated by such board.

4. To establish schedules for renewals of registration, certification, licensure, and the issuance of a multistate licensure privilege.

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

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

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

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

9. To take appropriate disciplinary action for violations of applicable law and regulations, *and to accept, in their discretion, the surrender of a license, certificate, registration or multistate licensure privilege in lieu of disciplinary action.*

10. To appoint a special conference committee, composed of not less than two members of a health regulatory board or, when required for special conference committees of the Board of Medicine, not less than two members of the Board and one member of the relevant advisory board, or, when required for special conference committees of the Board of Nursing, not less than one member of the Board and one member of the relevant advisory board, to act in accordance with § 2.2-4019 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final 30 days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the 30-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 limit the authority of a board to delegate to an appropriately qualified agency subordinate, as defined in § 2.2-4001, the authority to conduct informal fact-finding proceedings in accordance with § 2.2-4019,

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59 upon receipt of information that a practitioner may be subject to a disciplinary action. *The*
60 *recommendation of such subordinate may be considered by a panel consisting of at least five board*
61 *members, or, if a quorum of the board is less than five members, consisting of a quorum of the*
62 *members, convened for the purpose of issuing a case decision.* Criteria for the appointment of an agency
63 subordinate shall be set forth in regulations adopted by the board.

64 11. To convene, at their discretion, a panel consisting of at least five board members or, if a quorum
65 of the board is less than five members, consisting of a quorum of the members to conduct formal
66 proceedings pursuant to § 2.2-4020, decide the case, and issue a final agency case decision. Any
67 decision rendered by majority vote of such panel shall have the same effect as if made by the full board
68 and shall be subject to court review in accordance with the Administrative Process Act. No member who
69 participates in an informal proceeding conducted in accordance with § 2.2-4019 shall serve on a panel
70 conducting formal proceedings pursuant to § 2.2-4020 to consider the same matter.

71 12. To issue inactive licenses or certificates and promulgate regulations to carry out such purpose.
72 Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for
73 reactivation of licenses or certificates.

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

79 14. To request and accept from a certified, registered or licensed practitioner or person holding a
80 multistate licensure privilege to practice nursing, in lieu of disciplinary action, a confidential consent
81 agreement. A confidential consent agreement shall be subject to the confidentiality provisions of
82 § 54.1-2400.2 and shall not be disclosed by a practitioner. A confidential consent agreement shall
83 include findings of fact and may include an admission or a finding of a violation. A confidential consent
84 agreement shall not be considered either a notice or order of any health regulatory board, but it may be
85 considered by a board in future disciplinary proceedings. A confidential consent agreement shall be
86 entered into only in cases involving minor misconduct where there is little or no injury to a patient or
87 the public and little likelihood of repetition by the practitioner. A board shall not enter into a
88 confidential consent agreement if there is probable cause to believe the practitioner has (i) demonstrated
89 gross negligence or intentional misconduct in the care of patients or (ii) conducted his practice in such a
90 manner as to be a danger to the health and welfare of his patients or the public. A certified, registered
91 or licensed practitioner who has entered into two confidential consent agreements involving a standard
92 of care violation, within the 10-year period immediately preceding a board's receipt of the most recent
93 report or complaint being considered, shall receive public discipline for any subsequent violation within
94 the 10-year period unless the board finds there are sufficient facts and circumstances to rebut the
95 presumption that the disciplinary action be made public.

96 15. When a board has probable cause to believe a practitioner is unable to practice with reasonable
97 skill and safety to patients because of excessive use of alcohol or drugs or physical or mental illness, the
98 board, after preliminary investigation by an informal fact-finding proceeding, may direct that the
99 practitioner submit to a mental or physical examination. Failure to submit to the examination shall
100 constitute grounds for disciplinary action. Any practitioner affected by this subsection shall be afforded
101 reasonable opportunity to demonstrate that he is competent to practice with reasonable skill and safety to
102 patients. For the purposes of this subdivision, "practitioner" shall include any person holding a multistate
103 licensure privilege to practice nursing.

104 § 54.1-2408. Disqualification for license, certificate or registration.

105 A board within the Department of Health Professions shall refuse to admit a candidate to any
106 examination and shall refuse to issue a license, certificate or registration to any applicant if the candidate
107 or applicant has had his license, certificate or registration to practice the profession or occupation
108 revoked or suspended, and has not had his license, certificate or registration to so practice reinstated by
109 the jurisdiction which revoked or suspended his license, certificate or registration, *except as may be*
110 *necessary to license a nurse eligible for reinstatement in another party state as consistent with the*
111 *Nurse Licensure Compact.*

112 § 54.1-2409. Mandatory suspension or revocation; reinstatement; hearing for reinstatement.

113 A. Upon receipt of documentation by a *any* court or *government* agency; ~~state or federal~~, that a
114 person licensed, certified, or registered by a board within the Department of Health Professions has had
115 his license, certificate, or registration to practice the same profession or occupation revoked, ~~or~~
116 *suspended, or accepted for surrender in lieu of disciplinary action* in another jurisdiction and has not
117 had his license, certificate, or registration to so practice reinstated within that jurisdiction, or has been
118 convicted of a felony or has been adjudged incapacitated, the Director of the Department shall
119 immediately suspend, without a hearing, the license, certificate, or registration of any person so
120 disciplined, convicted or adjudged. The Director shall notify such person or his legal guardian,

conservator, trustee, committee, or other representative of the suspension in writing to his address on record with the Department. Such notice shall include a copy of the documentation from such court or agency, certified by the Director as the documentation received from such court or agency. Such person shall not have the right to practice within this Commonwealth until his license, certificate, or registration has been reinstated by the Board.

B. The clerk of any court in which a conviction of a felony or an adjudication of incapacity is made, who has knowledge that a person licensed, certified, or registered by a board within the Department has been convicted or found incapacitated, shall have a duty to report these findings promptly to the Director.

C. When a conviction has not become final, the Director may decline to suspend the license, certificate, or registration until the conviction becomes final if there is a likelihood of injury or damage to the public if the person's services are not available.

D. Any person whose license, certificate, or registration has been suspended as provided in this section may apply to the board for reinstatement of his license, certificate, or registration. Such person shall be entitled to a hearing not later than the next regular meeting of the board after the expiration of 60 days from the receipt of such application, and shall have the right to be represented by counsel and to summon witnesses to testify in his behalf. The Board may consider other information concerning possible violations of Virginia law at such hearing, if reasonable notice is given to such person of the information.

The reinstatement of the applicant's license, certificate, or registration shall require the affirmative vote of three-fourths of the members of the board at the hearing. The board may order such reinstatement without further examination of the applicant, or reinstate the license, certificate, or registration upon such terms and conditions as it deems appropriate.

E. Pursuant to the authority of the Board of Nursing provided in Chapter 30 (§ 54.1-3000 et seq.) of this title, the provisions of this section shall apply, mutatis mutandis, to persons holding a multistate licensure privilege to practice nursing.