

VIRGINIA ACTS OF ASSEMBLY -- 2013 SESSION

CHAPTER 144

An Act to amend and reenact §§ 38.2-5004, 54.1-2409.3, 54.1-2904, 54.1-2913.1, 54.1-2915, 54.1-2930 through 54.1-2933, 54.1-2935, 54.1-2939, 54.1-2949, 54.1-2950, 54.1-2951.1, 54.1-2953, and 54.1-2957.4 of the Code of Virginia, and to repeal §§ 54.1-2905, 54.1-2913, 54.1-2917, 54.1-2924, and 54.1-2928 of the Code of Virginia, relating to practice of medicine and other healing arts.

[S 950]

Approved March 12, 2013

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-5004, 54.1-2409.3, 54.1-2904, 54.1-2913.1, 54.1-2915, 54.1-2930 through 54.1-2933, 54.1-2935, 54.1-2939, 54.1-2949, 54.1-2950, 54.1-2951.1, 54.1-2953, and 54.1-2957.4 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-5004. Filing of claims; review by Board of Medicine; review by Department of Health; filing of responses; medical records.

A. 1. In all claims filed under this chapter, the claimant shall file with the Commission a petition, setting forth the following information:

a. The name and address of the legal representative and the basis for his representation of the injured infant;

b. The name and address of the injured infant;

c. The name and address of any physician providing obstetrical services who was present at the birth and the name and address of the hospital at which the birth occurred;

d. A description of the disability for which claim is made;

e. The time and place where the birth-related neurological injury occurred;

f. A brief statement of the facts and circumstances surrounding the birth-related neurological injury and giving rise to the claim;

g. All available relevant medical records relating to the person who allegedly suffered a birth-related neurological injury and an identification of any unavailable records known to the claimant and the reasons for their unavailability;

h. Appropriate assessments, evaluations, and prognoses and such other records and documents as are reasonably necessary for the determination of the amount of compensation to be paid to, or on behalf of, the injured infant on account of a birth-related neurological injury;

i. Documentation of expenses and services incurred to date, which indicates whether such expenses and services have been paid for, and if so, by whom; and

j. Documentation of any applicable private or governmental source of services or reimbursement relative to the alleged impairments.

2. The claimant shall furnish the Commission with as many copies of the petition as required for service upon the Program, any physician and hospital named in the petition, the Board of Medicine and the Department of Health, along with a \$15 filing fee. Upon receipt of the petition the Commission shall immediately serve the Program by service upon the agent designated to accept service on behalf of the Program in the plan of operation by registered or certified mail, and shall mail copies of the petition to any physician and hospital named in the petition, the Board of Medicine and the Department of Health.

B. Upon receipt of the petition or the filing of a claim relating to the conduct of a participating physician, the Department of Health Professions shall investigate the petition or claim, utilizing the same process as it does in investigating complaints filed under any provision contained in Title 54.1. Conduct of health care providers giving rise to disciplinary action shall be referred to the Board of Medicine for action consistent with the authority granted to the Board in §§ ~~54.1-2911 through 54.1-2928~~ *Article 2 (§ 54.1-2911 et seq.) of Chapter 29 of Title 54.1*. If a notice or order is issued by the Board of Medicine, a copy shall be mailed to the petitioner or claimant.

C. Upon receipt of the petition or the filing of a claim relating to the conduct of a participating hospital, the Department of Health shall investigate the petition or claim, utilizing the same process as it does in investigating complaints filed under any provision of Title 32.1. If it determines that there is reason to believe that the alleged injury resulted from, or was aggravated by, substandard care on the part of the hospital at which the birth occurred, it shall take any appropriate action consistent with the authority granted to the Department of Health in Title 32.1.

D. The Program shall file a response to the petition and submit relevant written information relating to the issue of whether the injury alleged is a birth-related neurological injury within the meaning of this chapter within 10 days after the date the panel report prepared pursuant to subsection C of § 38.2-5008 is filed with the Commission.

E. Any hospital at which a birth occurred, upon receipt of written notice from the legal representative

of an injured infant that he intends to file a petition under this chapter, shall promptly deliver to such person all available medical records relating to the infant who allegedly suffered a birth-related neurological injury.

F. As used in this chapter, fetal monitoring strips, whether printed or in electronic format, shall be deemed to constitute part of the medical records relating to an infant who allegedly suffered a birth-related neurological injury.

§ 54.1-2409.3. Participation of advisory boards in disciplinary proceedings.

Notwithstanding any provision of law to the contrary, whenever a disciplinary proceeding involves a respondent who holds a license or certificate authorizing the practice of a profession represented by a statutorily created advisory board whose members are appointed by the Governor, a member of such advisory board shall sit as a full voting member on any special conference committee, informal fact-finding panel, or formal hearing panel pursuant to Article 3 (§ 2.2-4018 et seq.) of Chapter 40 of Title 2.2; and §§ 54.1-2400; or 54.1-2408.2; or § 54.1-2917.

§ 54.1-2904. Biennial renewal of licenses; copies; fee; lapsed licenses; reinstatement; penalties.

A. Every license to practice medicine, osteopathy, chiropractic, or podiatry granted under the provisions of this chapter shall be renewed biennially as prescribed by the Board. The Board shall mail an application send notice for renewal of a license to every licensee. Failure to receive such an application notice shall not excuse any licensee from the requirements of renewal. The person receiving such application notice shall furnish the information requested and return the form submit the prescribed renewal fee to the Board with the prescribed renewal fee. Copies of licenses may be obtained as provided in the Board's regulations.

B. Any licensee who allows his license to lapse by failing to renew the license or failing to meet professional activity requirements stipulated in the regulations may be reinstated by the Board upon submission of evidence satisfactory to the Board that he is prepared to resume practice in a competent manner and upon payment of the prescribed fee.

C. Any person practicing medicine, osteopathy, chiropractic, or podiatry during the time his license has lapsed shall be considered an illegal practitioner and shall be subject to the penalties for violation of this chapter.

§ 54.1-2913.1. Acceptance of other examinations.

The Board shall promulgate regulations governing examinations for each branch of the healing arts. In lieu of any or all parts of the examinations prescribed by the Board for a license to practice medicine, osteopathy, podiatry or chiropractic, the Board may:

1. Accept a certificate issued by either the National Board for the appropriate branch of the healing arts or a state board prior to 1970 attesting the satisfactory completion of an examination given by that board if, in the opinion of the Board, the substituted examination material is substantially equivalent to the material for which it is substituted, and the passing grades are in each instance the equivalent of the grades required to be made on the corresponding examinations administered by the Board.
2. Accept a certificate issued by a state board during or after 1970 attesting to the applicant's satisfactory completion of all requirements to practice medicine, osteopathy, podiatry or chiropractic in that state, if the applicant has a current and unrestricted license to practice in another state and a current specialty certificate acceptable to the Board.

§ 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; reprimand any person; place any person on probation for such time as it may designate; impose a monetary penalty or terms as it may designate on any person; suspend any license for a stated period of time or indefinitely; or revoke any license for any of the following 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. 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;
4. Mental or physical incapacity or incompetence to practice his profession with safety to his patients and the public;
5. 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, or for an entity of the federal government;
6. Undertaking in any manner or by any means whatsoever to procure or perform or aid or abet in procuring or performing a criminal abortion;
7. 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;
8. 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;

9. 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;

10. 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;

11. 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;

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

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

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

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

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

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

18. 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;

19. 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.

§ 54.1-2930. Requirements for licensure.

The Board may ~~admit to examination for licensure~~ *issue a license* to practice medicine, osteopathy, chiropractic, and ~~podiatry~~ *podiatric medicine* to any candidate who has submitted satisfactory evidence verified by affidavits that he:

1. Is ~~eighteen~~ 18 years of age or more;

2. Is of good moral character;

3. Has successfully completed all or such part as may be prescribed by the Board, of an educational course of study of that branch of the healing arts in which he desires a license to practice, which course of study and the educational institution providing that course of study are acceptable to the Board; and

4. Has completed one year of satisfactory postgraduate training in a hospital approved by an accrediting agency recognized by the Board for internships or residency training. At the discretion of the Board, the postgraduate training may be waived if an applicant for licensure in podiatry has been in active practice for four continuous years while serving in the military and is a diplomate of the American Board of Podiatric Surgery. Applicants for licensure in chiropractic need not fulfill this requirement.

In determining whether such course of study and institution are acceptable to it, the Board may consider the reputation of the institution and whether it is approved or accredited by regional or national educational or professional associations including, but not limited to, such organizations as the Accreditation Council ~~of~~ *for* Graduate Medical Education ~~or other official accrediting body recognized by the American Medical Association;~~ *by the, Liaison Committee on Medical Education, Council on Postgraduate Training of the American Osteopathic Association, Council on Osteopathic College Accreditation, College of Family Physicians of Canada, Committee for the Accreditation of Canadian Medical Schools, Education Commission on Foreign Medical Graduates, Royal College of Physicians and Surgeons of Canada,* or their appropriate subsidiary agencies; by any appropriate agency of the United States government; or by any other organization approved by the Board. Supervised clinical training ~~which~~ *that* is received in the United States as part of the curriculum of a ~~foreign~~ *an international* medical school shall be obtained in an approved hospital, institution or school of medicine offering an approved residency program in the specialty area for the relevant clinical training. The Board may also consider any other factors that reflect whether that institution and its course of instruction provide training sufficient to prepare practitioners to practice their branch of the healing arts with competency and safety in the Commonwealth.

§ 54.1-2931. Examinations; passing grade.

A. The ~~examination~~ *examinations* of candidates for licensure to practice medicine and osteopathy shall be *those of the Federation Licensing Examination, the joint Licensure Examination Sequence prepared by the National Board of Medical Examiners and, the Federation of State Medical Boards, the National Board of Osteopathic Medical Examiners,* or such other examinations as determined by the Board. The minimum passing score shall be determined by the Board prior to administration of the examination.

B. The examination of candidates for licensure to practice chiropractic shall include the National Board of Chiropractic Examiners Examinations and such other examinations as determined by the Board. The minimum passing score shall be determined by the Board prior to administration of the examination.

C. The examination of candidates for licensure to practice podiatry shall be the National Board of Podiatry Podiatric Medical Examiners Examinations *examinations* and such other examinations as determined by the Board. The minimum passing score shall be determined by the Board prior to administration of the examination.

§ 54.1-2932. Issuance of licenses to practice.

Upon completion of ~~satisfactory examinations under the Board regulations of an application satisfactory to the Board,~~ applicants shall be granted licenses to practice medicine, osteopathy, chiropractic, or podiatry and each license shall show plainly on its face the school or branch of the healing arts in which the holder thereof is permitted to practice. All licenses shall be attested by the signature of the president and secretary of the Board, respectively.

§ 54.1-2933. Licensure of persons who studied in international medical schools.

The Board may license ~~by examination,~~ an individual as a physician in this Commonwealth who has studied in a ~~foreign~~ *an international* medical school if the ~~foreign~~ *international* medical school is acceptable to the Board and the individual has (i) qualified for and satisfactorily completed an appropriate supervised clinical training program as established by the American Medical Association; (ii) completed the postgraduate hospital training required by all applicants for licensure as defined in this chapter; and (iii) presented a document granted by the ~~foreign~~ *international* medical school certifying that all of the formal requirements of the school for a degree, except postgraduate internship and social services, have been met.

§ 54.1-2935. Supplemental training or study required of certain graduates.

In the event that a ~~candidate~~ *an applicant* has completed an educational course of study in an institution that is not approved by an accrediting agency recognized by the Board, the ~~candidate shall not be admitted to any examination given by the Board~~ *applicant shall not be licensed* until he has completed two years of satisfactory postgraduate training in a hospital approved by an accrediting agency recognized by the Board for internship or residency training. The Board may consider other postgraduate training as a substitute for the required postgraduate training if it finds that such training is substantially equivalent to that required by this section.

§ 54.1-2939. Surgery by podiatrists on patients under general anesthesia limited.

Podiatrists shall not perform surgery on patients under a general anesthetic except in a hospital approved by the Joint Commission on Accreditation of Health Care Organizations or in an ambulatory surgery center approved by the Joint Commission on Accreditation of Health Care Organizations, the Accreditation Association of Ambulatory Health Care, Inc., or the American Association for Accreditation of Ambulatory Surgery Facilities, Inc. Podiatrists shall perform such surgery only to the extent permitted by this chapter and the rules of such hospital *accredited by a national accrediting organization granted authority by the Centers for Medicare and Medicaid Services to assure compliance with Medicare conditions of participation pursuant to § 1865 of Title XVIII of the Social Security Act (42 U.S.C. § 1395bb).*

§ 54.1-2949. License required.

It shall be unlawful for a person to practice or to hold himself out as practicing as a ~~physician's or podiatrist's~~ *physician* assistant unless he holds a license as such issued by the Board.

§ 54.1-2950. Requisite training and educational achievements of assistants.

The Board shall establish a testing program to determine the training and educational achievements of the assistant or the Board may accept other evidence, such as experience or completion of an approved training program, in lieu of testing and shall establish this as a prerequisite for approval of the licensee's application.

Pending the outcome of the next examination administered by the National Commission for Certification of Physician Assistants, the Board may grant provisional licensure to graduates of physician or podiatrists' assistants curricula *which that* are approved by the ~~Committee on Allied Health Education and Accreditation of the American Medical Association or the Committee on Education of the American Podiatry Association~~ *Accreditation Review Commission on Education for the Physician Assistant*. Such provisional licensure shall be granted at the discretion of the Board.

§ 54.1-2951.1. Requirements for licensure as a physician assistant.

A. The Board shall promulgate regulations establishing requirements for licensure as a physician

assistant which shall include, but not be limited to, the following:

1. Successful completion of a physician assistant program or surgical physician assistant program accredited by the American Medical Association or a committee of the American Medical Association established to approve or accredit allied health education programs *Accreditation Review Commission on Education for the Physician Assistant*;

2. Passage of the certifying examination administered by the National Commission on Certification of Physician Assistants; and

3. Documentation that the applicant for licensure has not had his license or certification as a physician assistant suspended or revoked and is not the subject of any disciplinary proceedings in another jurisdiction.

B. Prior to initiating practice with a supervising physician, the physician assistant shall notify the Board and provide information which shall include, but not be limited to, the following:

1. The name, address, telephone number and any changes thereto, of the physician or physicians who will supervise the assistant in the relevant practice setting; and

2. A description of the practice and the way in which the physician assistant will be utilized.

§ 54.1-2953. Renewal, revocation, suspension, and refusal.

~~The approval of the Board for the employment of an assistant shall expire at the end of one year. A new application shall be submitted for approval, supplying such information as the Board may require, at the time and in the manner prescribed by the Board.~~

The Board may revoke, suspend, or refuse to renew an approval for any of the following:

1. Any reason stated in this chapter for revocation or suspension of the license of a practitioner;

2. Failure of the supervising licensee to supervise the assistant or failure of the employer to provide a licensee to supervise the assistant;

3. The assistant's engaging in acts beyond the scope of authority as approved by the Board;

4. Negligence or incompetence on the part of the assistant or the supervising licensee in his use of the assistant;

5. Violating or cooperating with others in violating any provision of this chapter or the regulations of the Board; or

6. A change in the Board's requirements for approval with which the assistant or the licensee does not comply.

§ 54.1-2957.4. Licensure as athletic trainer required; requisite training and educational requirements; powers of the Board concerning athletic training.

A. It shall be unlawful for any person to practice or to hold himself out as practicing as an athletic trainer unless he holds a license as an athletic trainer ~~90 days after the effective date of regulations promulgated by the Board implementing athletic trainer licensure issued by the Board.~~ The Board shall issue licenses to practice athletic training to applicants for such licensure who meet the requirements of this chapter and the Board's regulations.

B. The Board shall establish criteria for the licensure of athletic trainers to ensure the appropriate training and educational credentials for the practice of athletic training. Such criteria may include experiential requirements and shall include one of the following: (i) a Virginia testing program to determine the quality of the training and educational credentials for and competence of athletic trainers, (ii) successful completion of a training program and passage of the certifying examination administered by the National Athletic Training Association Board of Certification resulting in certification as an athletic trainer by such national association, or (iii) completion of another Board-approved training program and examination.

C. At its discretion, the Board may grant provisional licensure to persons who have successfully completed an approved training program or who have met requisite experience criteria established by the Board. Such provisional licensure shall expire as provided for in the regulations of the Board.

D. The Board shall promulgate such regulations as may be necessary for the licensure of athletic trainers and the issuance of licenses to athletic trainers to practice in the Commonwealth. The Board's regulations shall assure the competence and integrity of any person claiming to be an athletic trainer or who engages in the practice of athletic training.

2. That §§ 54.1-2905, 54.1-2913, 54.1-2917, 54.1-2924, and 54.1-2928 of the Code of Virginia are repealed.