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**HOUSE BILL NO. 1695**

Offered January 14, 2015

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*A BILL to amend and reenact § 54.1-2400 of the Code of Virginia, relating to powers and duties of health regulatory boards; health care practitioners with mental illness.*

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Patron—Yost

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Referred to Committee on Health, Welfare and Institutions

**Be it enacted by the General Assembly of Virginia:****1. That § 54.1-2400 of the Code of Virginia is amended and reenacted as follows:****§ 54.1-2400. General powers and duties of health regulatory boards.**

A. 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 or permit holder of the appropriate board may be subject to disciplinary action or to consider an application for a license, certification, registration, permit or multistate licensure privilege in nursing. The special conference committee may (i) exonerate; (ii) reinstate; (iii) place the practitioner or permit holder on probation with such terms as it may deem appropriate; (iv) reprimand; (v) modify a previous order; (vi) impose a monetary penalty pursuant to § 54.1-2401, (vii) deny or grant an application for licensure, certification, registration, permit, or multistate licensure privilege; and (viii) issue a restricted license, certification, registration, permit or multistate licensure privilege subject to terms and conditions. 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.

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59 This subdivision shall not be construed to limit the authority of a board to delegate to an appropriately  
60 qualified agency subordinate, as defined in § 2.2-4001, the authority to conduct informal fact-finding  
61 proceedings in accordance with § 2.2-4019, upon receipt of information that a practitioner may be  
62 subject to a disciplinary action. The recommendation of such subordinate may be considered by a panel  
63 consisting of at least five board members, or, if a quorum of the board is less than five members,  
64 consisting of a quorum of the members, convened for the purpose of issuing a case decision. Criteria for  
65 the appointment of an agency subordinate shall be set forth in regulations adopted by the board.

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

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

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

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

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

106 *B. A health regulatory board shall not revoke, suspend, restrict, or refuse to issue or renew a*  
107 *registration, certificate, license, or multistate licensure privilege or otherwise discipline a health care*  
108 *practitioner, including a holder of a multistate licensure privilege to practice nursing, on the grounds*  
109 *that the health care practitioner has or had mental illness absent clear and convincing evidence*  
110 *establishing that the health care practitioner's mental illness renders or rendered the health care*  
111 *practitioner unable to practice with reasonable skill and safety to patients.*

112 *C. No order of a health regulatory board revoking, suspending, restricting or refusing to issue or*  
113 *renew a registration, certification, license, or multistate licensure privilege due, in whole or in part, to a*  
114 *practitioner's inability or failure to practice with reasonable skill and safety to patients because of the*  
115 *practitioner's mental illness shall include any protected health information of the practitioner related to*  
116 *the practitioner's mental illness other than a statement that the practitioner is unable or has failed to*  
117 *practice with reasonable skill and safety to patients due to his mental illness.*