

16102660D

**HOUSE BILL NO. 498**

House Amendments in [ ] — January 26, 2016

A *BILL to amend and reenact § 54.1-3303 of the Code of Virginia, relating to TPA-certified optometrists; prescription of certain Schedule II controlled substances.*

Patron Prior to Engrossment—Delegate Hodges

Referred to Committee on Health, Welfare and Institutions

**Be it enacted by the General Assembly of Virginia:****1. That § 54.1-3303 of the Code of Virginia is amended and reenacted as follows:****§ 54.1-3303. Prescriptions to be issued and drugs to be dispensed for medical or therapeutic purposes only.**

A. A prescription for a controlled substance may be issued only by a practitioner of medicine, osteopathy, podiatry, dentistry or veterinary medicine who is authorized to prescribe controlled substances, or by a licensed nurse practitioner pursuant to § 54.1-2957.01, a licensed physician assistant pursuant to § 54.1-2952.1, or a TPA-certified optometrist pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32. The prescription shall be issued for a medicinal or therapeutic purpose and may be issued only to persons or animals with whom the practitioner has a bona fide practitioner-patient relationship.

For purposes of this section, a bona fide practitioner-patient-pharmacist relationship is one in which a practitioner prescribes, and a pharmacist dispenses, controlled substances in good faith to his patient for a medicinal or therapeutic purpose within the course of his professional practice. In addition, a bona fide practitioner-patient relationship means that the practitioner shall (i) ensure that a medical or drug history is obtained; (ii) provide information to the patient about the benefits and risks of the drug being prescribed; (iii) perform or have performed an appropriate examination of the patient, either physically or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically; except for medical emergencies, the examination of the patient shall have been performed by the practitioner himself, within the group in which he practices, or by a consulting practitioner prior to issuing a prescription; and (iv) initiate additional interventions and follow-up care, if necessary, especially if a prescribed drug may have serious side effects.

For the purpose of prescribing a Schedule VI controlled substance to a patient via telemedicine services as defined in § 38.2-3418.16, a prescriber may establish a bona fide practitioner-patient relationship by an examination through face-to-face interactive, two-way, real-time communications services or store-and-forward technologies when all of the following conditions are met: (a) the patient has provided a medical history that is available for review by the prescriber; (b) the prescriber obtains an updated medical history at the time of prescribing; (c) the prescriber makes a diagnosis at the time of prescribing; (d) the prescriber conforms to the standard of care expected of in-person care as appropriate to the patient's age and presenting condition, including when the standard of care requires the use of diagnostic testing and performance of a physical examination, which may be carried out through the use of peripheral devices appropriate to the patient's condition; (e) the prescriber is actively licensed in the Commonwealth and authorized to prescribe; (f) if the patient is a member or enrollee of a health plan or carrier, the prescriber has been credentialed by the health plan or carrier as a participating provider and the diagnosing and prescribing meets the qualifications for reimbursement by the health plan or carrier pursuant to § 38.2-3418.16; and (g) upon request, the prescriber provides patient records in a timely manner in accordance with the provisions of § 32.1-127.1:03 and all other state and federal laws and regulations. Nothing in this paragraph shall permit a prescriber to establish a bona fide practitioner-patient relationship for the purpose of prescribing a Schedule VI controlled substance when the standard of care dictates that an in-person physical examination is necessary for diagnosis. Nothing in this paragraph shall apply to: (1) a prescriber providing on-call coverage per an agreement with another prescriber or his prescriber's professional entity or employer; (2) a prescriber consulting with another prescriber regarding a patient's care; or (3) orders of prescribers for hospital out-patients or in-patients.

Any practitioner who prescribes any controlled substance with the knowledge that the controlled substance will be used otherwise than medicinally or for therapeutic purposes shall be subject to the criminal penalties provided in § 18.2-248 for violations of the provisions of law relating to the distribution or possession of controlled substances.

B. In order to determine whether a prescription that appears questionable to the pharmacist results from a bona fide practitioner-patient relationship, the pharmacist shall contact the prescribing practitioner or his agent and verify the identity of the patient and name and quantity of the drug prescribed. The

ENGROSSED

HB498E

59 person knowingly filling an invalid prescription shall be subject to the criminal penalties provided in  
60 § 18.2-248 for violations of the provisions of law relating to the sale, distribution or possession of  
61 controlled substances.

62 No prescription shall be filled unless there is a bona fide practitioner-patient-pharmacist relationship.  
63 A prescription not issued in the usual course of treatment or for authorized research is not a valid  
64 prescription.

65 C. Notwithstanding any provision of law to the contrary and consistent with recommendations of the  
66 Centers for Disease Control and Prevention or the Department of Health, a practitioner may prescribe  
67 Schedule VI antibiotics and antiviral agents to other persons in close contact with a diagnosed patient  
68 when (i) the practitioner meets all requirements of a bona fide practitioner-patient relationship, as  
69 defined in subsection A, with the diagnosed patient; (ii) in the practitioner's professional judgment, the  
70 practitioner deems there is urgency to begin treatment to prevent the transmission of a communicable  
71 disease; (iii) the practitioner has met all requirements of a bona fide practitioner-patient relationship, as  
72 defined in subsection A, for the close contact except for the physical examination required in clause (iii)  
73 of subsection A; and (iv) when such emergency treatment is necessary to prevent imminent risk of  
74 death, life-threatening illness, or serious disability.

75 D. A pharmacist may dispense a controlled substance pursuant to a prescription of an out-of-state  
76 practitioner of medicine, osteopathy, podiatry, dentistry or veterinary medicine authorized to issue such  
77 prescription if the prescription complies with the requirements of this chapter and the Drug Control Act  
78 (§ 54.1-3400 et seq.).

79 E. A licensed nurse practitioner who is authorized to prescribe controlled substances pursuant to  
80 § 54.1-2957.01 may issue prescriptions or provide manufacturers' professional samples for controlled  
81 substances and devices as set forth in the Drug Control Act (§ 54.1-3400 et seq.) in good faith to his  
82 patient for a medicinal or therapeutic purpose within the scope of his professional practice.

83 F. A licensed physician assistant who is authorized to prescribe controlled substances pursuant to  
84 § 54.1-2952.1 may issue prescriptions or provide manufacturers' professional samples for controlled  
85 substances and devices as set forth in the Drug Control Act (§ 54.1-3400 et seq.) in good faith to his  
86 patient for a medicinal or therapeutic purpose within the scope of his professional practice.

87 G. A TPA-certified optometrist who is authorized to prescribe controlled substances pursuant to  
88 Article 5 (§ 54.1-3222 et seq.) of Chapter 32 may issue prescriptions in good faith or provide  
89 manufacturers' professional samples to his patients for medicinal or therapeutic purposes within the  
90 scope of his professional practice for the drugs specified on the TPA-Formulary, established pursuant to  
91 § 54.1-3223, which shall be limited to (i) [ *analgesics included on* ] *Schedule II controlled substances as*  
92 *defined in § 54.1-3448 of the Drug Control Act (§ 54.1-3400 et seq.) consisting of hydrocodone in*  
93 *combination with acetaminophen;* (ii) oral analgesics included in Schedules III through VI, as defined in  
94 §§ 54.1-3450 and 54.1-3455 of the Drug Control Act (§ 54.1-3400 et seq.), which are appropriate to  
95 relieve ocular pain, ~~(ii)~~; (iii) other oral Schedule VI controlled substances, as defined in § 54.1-3455 of  
96 the Drug Control Act, appropriate to treat diseases and abnormal conditions of the human eye and its  
97 adnexa, ~~(iii)~~; (iv) topically applied Schedule VI drugs, as defined in § 54.1-3455 of the Drug Control  
98 Act; and ~~(iv)~~ (v) intramuscular administration of epinephrine for treatment of emergency cases of  
99 anaphylactic shock.

100 H. The requirement for a bona fide practitioner-patient relationship shall be deemed to be satisfied by  
101 a member or committee of a hospital's medical staff when approving a standing order or protocol for the  
102 administration of influenza vaccinations and pneumococcal vaccinations in a hospital in compliance with  
103 § 32.1-126.4.