

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 54.1-2523 and 54.1-2912.1 of the Code of Virginia, relating to*
3 *prescribers of covered substances; continuing education.*

4 [H 829]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That §§ 54.1-2523 and 54.1-2912.1 of the Code of Virginia are amended and reenacted as**
8 **follows:**9 **§ 54.1-2523. Confidentiality of data; disclosure of information; discretionary authority of**
10 **Director.**11 A. All data, records, and reports relating to the prescribing and dispensing of covered substances to
12 recipients and any abstracts from such data, records, and reports that are in the possession of the
13 Prescription Monitoring Program pursuant to this chapter and any material relating to the operation or
14 security of the program shall be confidential and shall be exempt from the Virginia Freedom of
15 Information Act (§ 2.2-3700 et seq.) pursuant to subdivision 15 of § 2.2-3705.5. Records in possession
16 of the Prescription Monitoring Program shall not be available for civil subpoena, nor shall such records
17 be disclosed, discoverable, or compelled to be produced in any civil proceeding, nor shall such records
18 be deemed admissible as evidence in any civil proceeding for any reason. Further, the Director shall
19 only have discretion to disclose any such information as provided in subsections B and C.20 B. Upon receiving a request for information in accordance with the Department's regulations and in
21 compliance with applicable federal law and regulations, the Director shall disclose the following:22 1. Information relevant to a specific investigation of a specific recipient or of a specific dispenser or
23 prescriber to an agent who has completed the Virginia State Police Drug Diversion School designated by
24 the superintendent of the Department of State Police or designated by the chief law-enforcement officer
25 of any county, city, or town or campus police department to conduct drug diversion investigations
26 pursuant to § 54.1-3405.27 2. Information relevant to an investigation or inspection of or allegation of misconduct by a specific
28 person licensed, certified, or registered by or an applicant for licensure, certification, or registration by a
29 health regulatory board; information relevant to a disciplinary proceeding before a health regulatory
30 board or in any subsequent trial or appeal of an action or board order to designated employees of the
31 Department of Health Professions; or to designated persons operating the Health Practitioners'
32 Monitoring Program pursuant to Chapter 25.1 (§ 54.1-2515 et seq.).33 3. Information relevant to the proceedings of any investigatory grand jury or special grand jury that
34 has been properly impaneled in accordance with the provisions of Chapter 13 (§ 19.2-191 et seq.) of
35 Title 19.2.36 4. Information relevant to a specific investigation of a specific recipient, dispenser, or prescriber to
37 an agent of a federal law-enforcement agency with authority to conduct drug diversion investigations.38 5. Information relevant to a specific investigation, supervision, or monitoring of a specific recipient
39 for purposes of the administration of criminal justice pursuant to Chapter 1 (§ 9.1-100 et seq.) of Title
40 9.1 to a probation or parole officer as described in Article 2 (§ 53.1-141 et seq.) of Chapter 4 of Title
41 53.1 or a local community-based probation officer as described in § 9.1-176.1 who has completed the
42 Virginia State Police Drug Diversion School designated by the Director of the Department of
43 Corrections or his designee.44 C. In accordance with the Department's regulations and applicable federal law and regulations, the
45 Director may, in his discretion, disclose:46 1. Information in the possession of the program concerning a recipient who is over the age of 18 to
47 that recipient. The information shall be mailed to the street or mailing address indicated on the recipient
48 request form.49 2. Information on a specific recipient to a prescriber, as defined in this chapter, for the purpose of
50 establishing the treatment history of the specific recipient when such recipient is either under care and
51 treatment by the prescriber or the prescriber is initiating treatment of such recipient. In a manner
52 specified by the Director in regulation, notice shall be given to patients that information may be
53 requested by the prescriber from the Prescription Monitoring Program.54 3. Information on a specific recipient to a dispenser for the purpose of establishing a prescription
55 history to assist the dispenser in determining the validity of a prescription in accordance with
56 § 54.1-3303 when the recipient is seeking a covered substance from the dispenser or the facility in

57 which the dispenser practices. In a manner specified by the Director in regulation, notice shall be given
 58 to patients that information may be requested by the dispenser from the Prescription Monitoring
 59 Program.

60 4. Information relevant to an investigation or regulatory proceeding of a specific dispenser or
 61 prescriber to other regulatory authorities concerned with granting, limiting or denying licenses,
 62 certificates or registrations to practice a health profession when such regulatory authority licenses such
 63 dispenser or prescriber or such dispenser or prescriber is seeking licensure by such other regulatory
 64 authority.

65 5. Information relevant to an investigation relating to a specific dispenser or prescriber who is a
 66 participating provider in the Virginia Medicaid program or information relevant to an investigation
 67 relating to a specific recipient who is currently eligible for and receiving or who has been eligible for
 68 and has received medical assistance services to the Medicaid Fraud Control Unit of the Office of the
 69 Attorney General or to designated employees of the Department of Medical Assistance Services, as
 70 appropriate.

71 6. Information relevant to determination of the cause of death of a specific recipient to the designated
 72 employees of the Office of the Chief Medical Examiner.

73 7. Information for the purpose of bona fide research or education to qualified personnel; however,
 74 data elements that would reasonably identify a specific recipient, prescriber, or dispenser shall be deleted
 75 or redacted from such information prior to disclosure. Further, release of the information shall only be
 76 made pursuant to a written agreement between such qualified personnel and the Director in order to
 77 ensure compliance with this subdivision.

78 8. Information relating to prescriptions for covered substances issued by a specific prescriber, which
 79 have been dispensed and reported to the Program, to that prescriber.

80 9. *Information to the Board of Medicine about prescribers who meet a certain threshold for*
 81 *prescribing covered substance for the purpose of requiring relevant continuing education. The threshold*
 82 *shall be determined by the Board of Medicine in consultation with the Program.*

83 D. The Director may enter into agreements for mutual exchange of information among prescription
 84 monitoring programs in other jurisdictions, which shall only use the information for purposes allowed by
 85 this chapter.

86 E. This section shall not be construed to supersede the provisions of § 54.1-3406 concerning the
 87 divulging of confidential records relating to investigative information.

88 F. Confidential information that has been received, maintained or developed by any board or
 89 disclosed by the board pursuant to subsection A shall not, under any circumstances, be available for
 90 discovery or court subpoena or introduced into evidence in any medical malpractice suit or other action
 91 for damages arising out of the provision of or failure to provide services. However, this subsection shall
 92 not be construed to inhibit any investigation or prosecution conducted pursuant to Article 1 (§ 18.2-247
 93 et seq.) of Chapter 7 of Title 18.2.

94 **§ 54.1-2912.1. Continued competency and office-based anesthesia requirements.**

95 A. The Board shall prescribe by regulation such requirements as may be necessary to ensure
 96 continued practitioner competence, which may include continuing education, testing, ~~and/or~~ or any other
 97 requirement.

98 B. In promulgating such regulations, the Board shall consider (i) the need to promote ethical practice,
 99 (ii) an appropriate standard of care, (iii) patient safety, (iv) application of new medical technology, (v)
 100 appropriate communication with patients, and (vi) knowledge of the changing health care system.

101 C. *The Board shall require prescribers identified by the Director of the Department of Health*
 102 *Professions pursuant to subdivision C 9 of § 54.1-2523 to complete two hours of continuing education in*
 103 *each biennium on topics related to pain management, the responsible prescribing of covered substances*
 104 *as defined in § 54.1-2519, and the diagnosis and management of addiction. Prescribers required to*
 105 *complete continuing education pursuant to this subsection shall be notified of such requirement no later*
 106 *than January 1 of each odd-numbered year.*

107 D. The Board may approve persons who provide or accredit such programs in order to accomplish
 108 the purposes of this section.

109 ~~D.~~ E. Pursuant to § 54.1-2400 and its authority to establish the qualifications for registration,
 110 certification, or licensure that are necessary to ensure competence and integrity to engage in the
 111 regulated practice, the Board of Medicine shall promulgate regulations governing the practice of
 112 medicine related to the administration of anesthesia in physicians' offices.

113 **2. That the provisions of this act shall expire on July 1, 2022.**