

# VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

## CHAPTER 94

*An Act to amend and reenact § 54.1-2408.1, 54.1-3424, and 54.1-3434 of the Code of Virginia, relating to the Board of Pharmacy; seizure of controlled substances and prescription devices.*

[S 1289]

Approved February 21, 2019

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 54.1-2408.1, 54.1-3424, and 54.1-3434 of the Code of Virginia are amended and reenacted as follows:**

**§ 54.1-2408.1. Summary action against licenses, certificates, registrations, or multistate licensure privilege; allegations to be in writing.**

A. Any health regulatory board may suspend the license, certificate, registration, permit, or multistate licensure privilege of any person holding a license, certificate, registration, permit, or licensure privilege issued by it without a hearing simultaneously with the institution of proceedings for a hearing, if the relevant board finds that there is a substantial danger to the public health or safety which warrants this action. A board may meet by telephone conference call when summarily suspending a license, certificate, registration, permit, or licensure privilege if a good faith effort to assemble a quorum of the board has failed and, in the judgment of a majority of the members of the board, the continued practice by the individual constitutes a substantial danger to the public health or safety. Institution of proceedings for a hearing shall be provided simultaneously with the summary suspension. The hearing shall be scheduled within a reasonable time of the date of the summary suspension.

B. Any health regulatory board may restrict the license, certificate, registration, permit, or multistate licensure privilege of any person holding a license, certificate, registration, permit, or licensure privilege issued by it without proceeding simultaneously with notification of an informal conference pursuant to §§ 2.2-4019 and 54.1-2400, if the relevant board finds that there is a substantial danger to the public health or safety that warrants this action. A board may meet by telephone conference call when summarily restricting a license, certificate, registration, permit, or licensure privilege if a good faith effort to assemble a quorum of the board has failed and, in the judgment of a majority of the members of the board, the continued practice by the individual constitutes a substantial danger to the public health or safety. The informal conference shall be scheduled within a reasonable time of the date of the summary restriction. *Evidence establishing that the registration issued by the U.S. Drug Enforcement Administration to a person holding a license, certificate, registration, permit, or multistate licensure privilege has been suspended or voluntarily surrendered in lieu of disciplinary action is sufficient for a finding that there is a substantial danger to the public health or safety.*

C. Allegations of violations of this title shall be made in writing to the relevant health regulatory board.

**§ 54.1-3424. Suspension or revocation of registration, license or permit; limitation to particular controlled substance; controlled substances placed under seal; sale of perishables and forfeiture; notification to DEA.**

A. A registration to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the Board upon a finding that the registrant:

1. Has furnished false or fraudulent material information in an application filed under this chapter;
2. Has been convicted of a felony under any state or federal law relating to any controlled substance;
3. Has had his federal registration to manufacture, distribute or dispense controlled substances suspended or revoked;
4. Has violated or cooperated with others in violating any provision of this chapter or regulations of the Board relating to the manufacture, distribution or dispensing of controlled substances.

B. The Board may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

C. ~~If the Board suspends or revokes a registration, or if the license or permit of a person possessing controlled substances under an exemption in § 54.1-3422 A is suspended or revoked by the issuing board, all controlled substances owned or possessed by the registrant, licensee or permittee at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances shall be forfeited to the Commonwealth.~~ *summarily suspends, suspends, or revokes a registration, license, permit, or certificate, all controlled substances and prescription devices owned or possessed pursuant to the registration, license, permit, or certificate may be placed under seal by the Board or an*

authorized agent of the Board as of the effective date of the order of summary suspension, suspension, or revocation. The Board or an authorized agent of the board shall perform an inventory of the controlled substances and prescription devices placed under seal. The controlled substances and prescription devices under seal shall remain in a secured manner on the premises at the previously authorized address of the registration, license, permit, or certificate. No person shall access or relocate such controlled substances and prescription devices without authorization from the Board. The registrant, licensee, permittee, or certificate holder shall ensure the controlled substances and prescription devices remain securely under seal at all times with no unauthorized access.

Following the conclusion of all appeals, if any, or the deadline to file an appeal, if none are filed, the controlled substances and prescription devices shall be subject to forfeiture. The Board shall direct the owner to appropriately transfer or dispose of the sealed controlled substances and prescription devices under the supervision of an authorized agent, or the controlled substances and devices shall be forfeited, seized, and destroyed by the Board, the authorized agent of the Board, or any law-enforcement officer. Costs associated with the storage and destruction of the seized substances and devices shall be at the expense of the owner of such.

Prior to forfeiture, the owner of the controlled substances or prescription devices may request permission from the Board to transfer the sealed controlled substances and prescription devices, at the owner's expense and under the supervision of an authorized agent, to an entity authorized to possess or destroy such substances or devices.

D. Controlled substances and prescription devices that have been abandoned and are stored at a location that is not authorized for the storage of such substances and devices shall be considered contraband. The Board, an authorized agent of the Board, or any law-enforcement officer may seize and destroy such substances and devices. Costs associated with the storage and destruction of the seized substances and devices shall be at the expense of the owner of such substances and devices, if known.

E. The Board shall promptly notify the DEA of all orders suspending or revoking registration and all forfeitures of controlled substances.

#### **§ 54.1-3434. Permit to conduct pharmacy.**

No person shall conduct a pharmacy without first obtaining a permit from the Board.

The application for such permit shall be made on a form provided by the Board and signed by a pharmacist who will be in full and actual charge of the pharmacy and who will be fully engaged in the practice of pharmacy at the location designated on the application.

The application shall (i) show the corporate name and trade name, (ii) list any pharmacist in addition to the pharmacist-in-charge practicing at the location indicated on the application, and (iii) list the hours during which the pharmacy will be open to provide pharmacy services. Any change in the hours of operation, which is expected to last more than one week, shall be reported to the Board in writing and posted, at least fourteen days prior to the anticipated change, in a conspicuous place to provide notice to the public. The Board shall promulgate regulations to provide exceptions to this prior notification.

If the owner is other than the pharmacist making the application, the type of ownership shall be indicated and shall list any partner or partners, and, if a corporation, then the corporate officers and directors. Further, if the owner is not a pharmacist, he shall not abridge the authority of the pharmacist-in-charge to exercise professional judgment relating to the dispensing of drugs in accordance with this act and Board regulations.

The permit shall be issued only to the pharmacist who signs the application as the pharmacist-in-charge and as such assumes the full responsibilities for the legal operation of the pharmacy. This permit and responsibilities shall not be construed to negate any responsibility of any pharmacist or other person.

Upon termination of practice by the pharmacist-in-charge, or upon any change in partnership composition, or upon the acquisition, as defined in Board regulations, of the existing corporation by another person or the closing of a pharmacy, the permit previously issued shall be immediately surrendered to the Board by the pharmacist-in-charge to whom it was issued, or by his legal representative, and an application for a new permit may be made in accordance with the requirements of this chapter.

The Board shall promulgate regulations (i) defining acquisition of an existing permitted, registered or licensed facility or of any corporation under which the facility is directly or indirectly organized; (ii) providing for the transfer, confidentiality, integrity, and security of the pharmacy's prescription dispensing records and other patient records, regardless of where located; and (iii) establishing a reasonable time period for designation of a new pharmacist-in-charge. At the conclusion of the time period for designation of a new pharmacist-in-charge, a pharmacy which has failed to designate a new pharmacist-in-charge shall not operate as a pharmacy nor maintain a stock of prescription drugs on the premises. The Director shall immediately notify the owner of record that the pharmacy no longer holds a valid permit and that the owner shall make provision for the proper disposition of all Schedule II through VI drugs and devices on the premises within ~~fifteen~~ 15 days of receipt of this notice. At the conclusion of the ~~fifteen-day~~ 15-day period, the Director or his authorized agent, or any law-enforcement officer in coordination with the Director, shall seize and indefinitely secure all Schedule II through VI

drugs and devices still on the premises, and *the Director shall* notify the owner of such seizure. The Director, *his authorized agent, or the law-enforcement officer* may properly dispose of the seized drugs and devices after ~~six months~~ 60 days from the date of the notice of seizure if the owner has not claimed and provided for the proper disposition of the property. The Board *or law enforcement agency* shall assess a fee of not less than the cost of storage of said drugs upon the owner for reclaiming seized property.

The succeeding pharmacist-in-charge shall cause an inventory to be made of all Schedule I, II, III, IV and V drugs on hand. Such inventory shall be completed as of the date he becomes pharmacist-in-charge and prior to opening for business on that date.

The pharmacist to whom such permit is issued shall provide safeguards against diversion of all controlled substances.

An application for a pharmacy permit shall be accompanied by a fee determined by the Board. All permits shall expire annually on a date determined by the Board in regulation.

Every pharmacy shall be equipped so that prescriptions can be properly filled. The Board of Pharmacy shall prescribe the minimum of such professional and technical equipment and reference material which a pharmacy shall at all times possess. Nothing shall prevent a pharmacist who is eligible to receive information from the Prescription Monitoring Program from requesting and receiving such information; however, no pharmacy shall be required to maintain Internet access to the Prescription Monitoring Program. No permit shall be issued or continued for the conduct of a pharmacy until or unless there is compliance with the provisions of this chapter and regulations promulgated by the Board.

Every pharmacy shall comply with federal requirements for an electronic, interoperable system to identify, trace, and verify prescription drugs as they are distributed.

Each day during which a person is in violation of this section shall constitute a separate offense.