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SENATE BILL NO. 431

Offered January 8, 2020

Prefiled January 7, 2020

A BILL to amend and reenact §§ 20-124.6 and 54.1-2915 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 35 of Title 54.1 a section numbered 54.1-3506.2 and by adding in Chapter 36 of Title 54.1 a section numbered 54.1-3617, relating to provision of mental health services to a minor; access to health records.

Patron—Surovell

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 20-124.6 and 54.1-2915 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 35 of Title 54.1 a section numbered 54.1-3506.2 and by adding in Chapter 36 of Title 54.1 a section numbered 54.1-3617 as follows:

§ 20-124.6. Access to minor's records.

A. Notwithstanding any other provision of law, neither parent, regardless of whether such parent has custody, shall be denied access to the academic or health records of that parent's minor child unless otherwise ordered by the court for good cause shown or pursuant to subsection B.

B. In the case of health records, access may also be denied if the minor's treating physician or the minor's treating clinical psychologist has made a part of the minor's record a written statement that, in the exercise of his professional judgment, the furnishing to or review by the requesting parent of such health records would be reasonably likely to cause substantial harm to the minor or another person. If a health care entity denies a parental request for access to, or copies of, a minor's health record, the health care entity denying the request shall comply with the provisions of subsection F of § 32.1-127.1:03. The minor or his parent, either or both, shall have the right to have the denial reviewed as specified in subsection F of § 32.1-127.1:03 to determine whether to make the minor's health record available to the requesting parent.

C. No health care provider shall refuse to provide mental health services to a minor solely on the basis that a parent of such minor does not consent to having his access to the health records of such minor limited or denied for any reason other than those provided in subsections A and B.

D. For the purposes of this section, the meaning of the term "health record" or the plural thereof and the term "health care entity" shall be as "health care entity," "health care provider," and "health record" mean the same as those terms are defined in subsection B of § 32.1-127.1:03.

§ 54.1-2915. Unprofessional conduct; grounds for refusal or disciplinary action.

A. The Board may 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

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59 in violation of the provisions of this chapter;

60 10. Knowingly and willfully committing an act that is a felony under the laws of the Commonwealth
61 or the United States, or any act that is a misdemeanor under such laws and involves moral turpitude;

62 11. Aiding or abetting, having professional connection with, or lending his name to any person
63 known to him to be practicing illegally any of the healing arts;

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

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

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

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

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

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

74 18. Violating or cooperating with others in violating any of the provisions of Chapters 1 (§ 54.1-100
75 et seq.), 24 (§ 54.1-2400 et seq.) and this chapter or regulations of the Board;

76 19. Engaging in sexual contact with a patient concurrent with and by virtue of the practitioner and
77 patient relationship or otherwise engaging at any time during the course of the practitioner and patient
78 relationship in conduct of a sexual nature that a reasonable patient would consider lewd and offensive;

79 20. Conviction in any state, territory, or country of any felony or of any crime involving moral
80 turpitude;

81 21. Adjudication of legal incompetence or incapacity in any state if such adjudication is in effect and
82 the person has not been declared restored to competence or capacity;

83 22. Performing the services of a medical examiner as defined in 49 C.F.R. § 390.5 if, at the time
84 such services are performed, the person performing such services is not listed on the National Registry
85 of Certified Medical Examiners as provided in 49 C.F.R. § 390.109 or fails to meet the requirements for
86 continuing to be listed on the National Registry of Certified Medical Examiners as provided in 49
87 C.F.R. § 390.111; ~~or~~

88 23. Failing or refusing to complete and file electronically using the Electronic Death Registration
89 System any medical certification in accordance with the requirements of subsection C of § 32.1-263.
90 However, failure to complete and file a medical certification electronically using the Electronic Death
91 Registration System in accordance with the requirements of subsection C of § 32.1-263 shall not
92 constitute unprofessional conduct if such failure was the result of a temporary technological or electrical
93 failure or other temporary extenuating circumstance that prevented the electronic completion and filing
94 of the medical certification using the Electronic Death Registration System; *or*

95 24. *Conditioning the delivery of mental health services to a minor on the agreement of the minor's*
96 *parent or guardian to refrain from requesting or subpoenaing medical records or court testimony.*

97 B. The commission or conviction of an offense in another state, territory, or country, which if
98 committed in Virginia would be a felony, shall be treated as a felony conviction or commission under
99 this section regardless of its designation in the other state, territory, or country.

100 C. The Board shall refuse to issue a certificate or license to any applicant if the candidate or
101 applicant has had his certificate or license to practice a branch of the healing arts revoked or suspended,
102 and has not had his certificate or license to so practice reinstated, in another state, the District of
103 Columbia, a United States possession or territory, or a foreign jurisdiction.

104 **§ 54.1-3506.2. Conditioning of mental health treatment for minors prohibited.**

105 *No practitioner licensed pursuant to this chapter shall condition the delivery of mental health*
106 *treatment to a minor on the agreement of the minor's parent or guardian to refrain from requesting or*
107 *subpoenaing medical records or court testimony.*

108 **§ 54.1-3617. Conditioning of mental health treatment for minors prohibited.**

109 *No practitioner licensed pursuant to this chapter shall condition the delivery of mental health*
110 *treatment to a minor on the agreement of the minor's parent or guardian to refrain from requesting or*
111 *subpoenaing medical records or court testimony.*