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HOUSE BILL NO. 1426

Offered January 11, 2023

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A BILL to amend and reenact §§ 54.1-2400, 54.1-2400.01, 54.1-2505, 54.1-2912.1, and 54.1-3005 of the Code of Virginia, relating to Department of Health Professions and Boards of Medicine and Nursing; continued competency; human trafficking training required.

Patrons—Tata, Murphy and Simonds

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2400, 54.1-2400.01, 54.1-2505, 54.1-2912.1, and 54.1-3005 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2400. General powers and duties of health regulatory boards.

The general powers and duties of health regulatory boards shall be:

1. To establish the qualifications for registration, certification, licensure, permit, 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, licensure, or registration. 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, permit, and the issuance of a multistate licensure privilege.

5. To levy and collect fees for application processing, examination, registration, certification, permitting, 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.) that are reasonable and necessary to administer effectively the regulatory system, which shall include provisions for the satisfaction of board-required continuing education for individuals registered, certified, licensed, or issued a multistate licensure privilege by a health regulatory board through delivery of health care services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those health services. 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.).

7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate, license, permit, 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.). 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, permit, 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)

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59 issue a restricted license, certification, registration, permit or multistate licensure privilege subject to
60 terms and conditions. The order of the special conference committee shall become final 30 days after
61 service of the order unless a written request to the board for a hearing is received within such time. If
62 service of the decision to a party is accomplished by mail, three days shall be added to the 30-day
63 period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall
64 then proceed with a hearing as provided in § 2.2-4020, and the action of the committee shall be vacated.
65 This subdivision shall not be construed to limit the authority of a board to delegate to an appropriately
66 qualified agency subordinate, as defined in § 2.2-4001, the authority to conduct informal fact-finding
67 proceedings in accordance with § 2.2-4019, upon receipt of information that a practitioner may be
68 subject to a disciplinary action. The recommendation of such subordinate may be considered by a panel
69 consisting of at least five board members, or, if a quorum of the board is less than five members,
70 consisting of a quorum of the members, convened for the purpose of issuing a case decision. Criteria for
71 the appointment of an agency subordinate shall be set forth in regulations adopted by the board.

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

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

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

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

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

114 16. *To establish training standards for health care practitioners in the subject of human trafficking.*
115 *The Board shall require all health care practitioners regulated pursuant to this chapter to complete a*
116 *training on human trafficking, including strategies for identifying and assisting victims of human*
117 *trafficking. The training standards shall be approved by the Director and shall include at least one*
118 *course that is available without charge. Approved training courses shall be posted on the Department of*
119 *Health Professions website. The successful completion of this training shall be a condition of renewals*
120 *of registration, certification, licensure, permit, and the issuance of a multistate licensure privilege.*

§ 54.1-2400.01. Certain definitions.

As used in this subtitle, ~~"laser"~~ chapter, unless the context requires a different meaning:

"Board" means the Board of Health Professions.

"Director" means the Director of the Department of Health Professions.

"Health care practitioner" means an individual who holds a license, certificate, permit, or other authorization issued under this title to engage in a health care profession and who provides direct patient care.

"Laser" surgery" means treatment through revision, destruction, incision, or other structural alteration of human tissue using laser technology. Under this definition, the continued use of laser technology solely for nonsurgical purposes of examination and diagnosis shall be permitted for those professions whose licenses permit such use.

§ 54.1-2505. Powers and duties of Director of Department.

The Director of the Department shall have the following powers and duties:

1. To supervise and manage the Department;
2. To perform or consolidate such administrative services or functions as may assist the operation of the boards;
3. To prepare, approve and submit to the Governor, after consultation with the boards, all requests for appropriations and be responsible for all expenditures pursuant to appropriations;
4. To provide such office facilities as will allow the boards to carry out their duties;
5. To employ personnel as required for the proper performance of the responsibilities of the Department subject to Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2 within the limits of appropriations made by law;
6. To receive all complaints made against regulated health care professionals;
7. To develop administrative policies and procedures governing the receipt and recording of complaints;
8. To monitor the status of actions taken under the auspices of the boards regarding complaints until the closure of each case;
9. To provide investigative and such other services as needed by the boards to enforce their respective statutes and regulations;
10. To provide staff to assist in the performance of the duties of the Board of Health Professions;
11. To collect and account for all fees to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the health regulatory boards, the Health Practitioners' Monitoring Program, and the Department and Board of Health Professions shall be paid. Such fees shall be held exclusively to cover the expenses of the health regulatory boards, the Health Practitioners' Monitoring Program, and the Department and Board of Health Professions and shall not be transferred to any agency other than the Department of Health Professions, except as provided in §§ 54.1-3011.1 and 54.1-3011.2;
12. To make and enter into all contracts and agreements necessary or incidental to the performance of his duties and the execution of his powers, including, but not limited to, contracts with the United States, other states, agencies and governmental subdivisions of the Commonwealth;
13. To accept grants from the United States government, its agencies and instrumentalities, and any other source. The Director shall have the power to comply with conditions and execute agreements as may be necessary, convenient or desirable;
14. To promulgate and revise regulations necessary for the administration of the Department and such regulations as are necessary for the implementation of the Health Practitioners' Monitoring Program pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of this title and subdivision 19 of this section;
15. To report promptly, after consultation with the presiding officer of the appropriate health regulatory board or his designee, to the Attorney General or the appropriate attorney for the Commonwealth any information the Department obtains which, upon appropriate investigation, indicates, in the judgment of the Director, that a person licensed by any of the health regulatory boards has violated any provision of criminal law, including the laws relating to manufacturing, distributing, dispensing, prescribing or administering drugs other than drugs classified as Schedule VI drugs. When necessary, the Attorney General or the attorney for the Commonwealth shall request that the Department of Health Professions or the Department of State Police conduct any subsequent investigation of such report. Upon request and affidavit from an attorney for the Commonwealth, the Director shall provide documents material to a criminal investigation of a person licensed by a health regulatory board; however, peer review documents shall not be released and shall remain privileged pursuant to § 8.01-581.17. For the purpose of this section, the terms manufacturing, distributing, dispensing, prescribing or administering drugs shall not include minor administrative or clerical errors which do not affect the inventory of drugs required by Chapter 34 (§ 54.1-3400 et seq.) of this title and do not indicate a pattern of criminal behavior;

16. To keep records of the names and qualifications of registered, certified or licensed persons;

17. To exercise other powers and perform other duties required of the Director by the Governor;

18. To issue subpoenas in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) for any informal fact finding or formal proceeding within the jurisdiction of the Department or any regulatory board;

19. To establish, and revise as necessary, a health practitioners' monitoring program pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of this title;

20. To establish, and revise as necessary, with such federal funds, grants, or general funds as may be appropriated or made available for this program, the Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of this title; ~~and~~

21. To assess a civil penalty against any person who is not licensed by a health regulatory board for failing to report a violation pursuant to § 54.1-2400.6 or § 54.1-2909; *and*

22. *To approve training courses on human trafficking detection, prevention, and response pursuant to § 54.1-2400, including training courses conducted by health care facilities.*

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

A. The Board shall prescribe by regulation such requirements as may be necessary to ensure continued practitioner competence, which may include continuing education, testing, ~~and/or~~ or any other requirement, *and shall require all practitioners licensed pursuant to this chapter to complete training on topics related to human trafficking pursuant to § 54.1-2400.*

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

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

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

§ 54.1-3005. Specific powers and duties of Board.

In addition to the general powers and duties conferred in this title, the Board shall have the following specific powers and duties:

1. To prescribe minimum standards and approve curricula for educational programs preparing persons for licensure, certification, or registration under this chapter;
2. To approve programs that meet the requirements of this chapter and of the Board;
3. To provide consultation service for educational programs as requested;
4. To provide for periodic surveys of educational or training programs;
5. To deny or withdraw approval from educational or training programs for failure to meet prescribed standards;
6. To provide consultation regarding nursing practice for institutions and agencies as requested and investigate illegal nursing practices;
7. To keep a record of all its proceedings;
8. To certify and maintain a registry of all certified nurse aides and to promulgate regulations consistent with federal law and regulation. The Board shall require all schools to demonstrate their compliance with § 54.1-3006.2 upon application for approval or reapproval, during an on-site visit, or in response to a complaint or a report of noncompliance. The Board may impose a fee pursuant to § 54.1-2401 for any violation thereof. Such regulations may include standards for the authority of licensed practical nurses to teach nurse aides;
9. To maintain a registry of clinical nurse specialists and to promulgate regulations governing clinical nurse specialists;
10. To license and maintain a registry of all licensed massage therapists and to promulgate regulations governing the criteria for licensure as a massage therapist and the standards of professional conduct for licensed massage therapists;
11. To promulgate regulations for the delegation of certain nursing tasks and procedures not involving assessment, evaluation or nursing judgment to an appropriately trained unlicensed person by and under the supervision of a registered nurse, who retains responsibility and accountability for such delegation;
12. To develop and revise as may be necessary, in coordination with the Boards of Medicine and Education, guidelines for the training of employees of a school board in the administration of insulin and glucagon for the purpose of assisting with routine insulin injections and providing emergency treatment for life-threatening hypoglycemia. The first set of such guidelines shall be finalized by September 1, 1999, and shall be made available to local school boards for a fee not to exceed the costs of publication;

244 13. To enter into the Nurse Licensure Compact as set forth in this chapter and to promulgate
245 regulations for its implementation;

246 14. To collect, store and make available nursing workforce information regarding the various
247 categories of nurses certified, licensed or registered pursuant to § 54.1-3012.1;

248 15. To expedite application processing, to the extent possible, pursuant to § 54.1-119 for an applicant
249 for licensure or certification by the Board upon submission of evidence that the applicant, who is
250 licensed or certified in another state, is relocating to the Commonwealth pursuant to a spouse's official
251 military orders;

252 16. To register medication aides and promulgate regulations governing the criteria for such
253 registration and standards of conduct for medication aides;

254 17. To approve training programs for medication aides to include requirements for instructional
255 personnel, curriculum, continuing education, and a competency evaluation;

256 18. To set guidelines for the collection of data by all approved nursing education programs and to
257 compile this data in an annual report. The data shall include but not be limited to enrollment, graduation
258 rate, attrition rate, and number of qualified applicants who are denied admission;

259 19. To develop, in consultation with the Board of Pharmacy, guidelines for the training of employees
260 of child day programs as defined in § 22.1-289.02 and regulated by the Board of Education in the
261 administration of prescription drugs as defined in the Drug Control Act (§ 54.1-3400 et seq.). Such
262 training programs shall be taught by a registered nurse, licensed practical nurse, doctor of medicine or
263 osteopathic medicine, or pharmacist;

264 20. In order to protect the privacy and security of health professionals licensed, registered or certified
265 under this chapter, to promulgate regulations permitting use on identification badges of first name and
266 first letter only of last name and appropriate title when practicing in hospital emergency departments, in
267 psychiatric and mental health units and programs, or in health care facility units offering treatment for
268 patients in custody of state or local law-enforcement agencies;

269 21. To revise, as may be necessary, guidelines for seizure management, in coordination with the
270 Board of Medicine, including the list of rescue medications for students with epilepsy and other seizure
271 disorders in the public schools. The revised guidelines shall be finalized and made available to the
272 Board of Education by August 1, 2010. The guidelines shall then be posted on the Department of
273 Education's website; ~~and~~

274 22. To promulgate, together with the Board of Medicine, regulations governing the licensure of nurse
275 practitioners pursuant to § 54.1-2957 and the licensure of licensed certified midwives pursuant to §
276 54.1-2957.04; *and*

277 23. *To approve training courses on human trafficking detection, prevention, and response pursuant to*
278 *§ 54.1-2400, the successful completion of which shall be required of all practitioners licensed pursuant*
279 *to this chapter.*

280 **2. That as soon as practicable after the effective date of this act, the Director of the Department of**
281 **Health Professions shall approve and post on the Department's website the list of approved human**
282 **trafficking detection, prevention, and response training courses and adopt rules necessary to**
283 **implement the training standards set forth in § 54.1-2400 of the Code of Virginia, as amended by**
284 **this act.**

285 **3. That as soon as practicable after the effective date of this act, the applicable regulatory boards**
286 **shall provide notice to health care practitioners of the human trafficking detection, prevention, and**
287 **response training required under § 54.1-2400 of the Code of Virginia, as amended by this act.**