

VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

CHAPTER 530

An Act to amend and reenact §§ 54.1-2910, 54.1-2919, and 54.1-2920 of the Code of Virginia, relating to disciplinary actions against health care professionals.

[H 1134]

Approved April 2, 1996

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2910, 54.1-2919, and 54.1-2920 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2910. Confidentiality of investigative information required.

A. Any reports, information or records received and maintained by the medical complaint investigation committee or the Board of Medicine in connection with possible disciplinary proceedings, including any material received or developed by the committee or Board during an investigation or hearing, shall be strictly confidential. However, the Board may only disclose any such confidential information:

1. In a disciplinary hearing before the Board or in any subsequent trial or appeal of a Board action or order;

2. To physician-licensing or disciplinary authorities of other jurisdictions or to hospital committees located within or outside this Commonwealth which are concerned with granting, limiting or denying a physician's hospital privileges if a final determination regarding a violation of this chapter has been made;

3. Pursuant to an order of a court of competent jurisdiction; or

4. To qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any patient or physician is first deleted and a final determination regarding a violation of this chapter has been made.

B. Orders of the Board relating to disciplinary action against a physician are not required to be confidential.

C. In no event shall confidential information received, maintained or developed by the committee or Board, or disclosed by the Board to others, pursuant to this section be available for discovery or court subpoena or introduced into evidence in any medical malpractice suit or other action for damages arising out of the provision of or failure to provide health care services. However, this section shall not be construed to inhibit an investigation or prosecution under Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2.

D. Any person found guilty of the unlawful disclosure of such confidential information possessed by the Board shall be guilty of a Class 1 misdemeanor.

E. Any claim of physician-patient privilege shall not prevail in any investigation or proceeding by the Board acting within the scope of its authority. However, the disclosure of any information pursuant to this provision shall not be deemed a waiver of such privilege in any other proceeding.

F. This section shall not prohibit the Director of the Department of Health ~~Regulation~~ *Professions*, after consultation with the Board president or his designee, from disclosing to the Attorney General or the appropriate attorney for the Commonwealth investigatory information which indicates a possible violation of any provision of law relating to the manufacture, distribution, dispensing, prescribing or administration of drugs other than drugs classified as Schedule VI drugs and devices by any individual licensed or otherwise regulated by the Board of Medicine.

G. This section shall not prohibit the Director of the Department of Health Professions from disclosing matters listed in subdivision A 1, A 2 or A 3 of § 54.1-2909.

§ 54.1-2919. Procedure upon information that practitioner may be subject to disciplinary action; special committee; further proceedings.

Upon receipt of information that a practitioner of any of the healing arts may be subject to disciplinary action by the Board on any of the grounds set forth in this chapter, the president may appoint a special committee of three members of the Board, of whom one shall be designated as chairman. *The president shall appoint such a committee if the information includes a report of an investigation which found probable cause for disciplinary action.* The president or his designee shall then notify the executive director and the chairman of the appointment and transmit to the chairman the information which initiated the appointment of the special committee.

The Board shall thereupon mail to the practitioner a statement of such information and a request for an informal conference with the committee at a time and place to be specified in the request. In no case shall the informal conference be held before the expiration of thirty days after the request was mailed unless the practitioner consents to a shorter period. The Board shall also mail to the practitioner, with

the request for an informal conference, a statement of the action the committee is authorized to take after such conference. In cases where a practitioner is charged with using intoxicating liquors, narcotics or other drugs to the extent that he is unsafe for the performance of his professional obligations and duties, the committee shall thoroughly evaluate the physical and mental condition of the practitioner together with the facts contained in the report alleging such unprofessional conduct before taking action.

After the conference at which the practitioner may appear, if a majority of the committee agrees that a suspension or revocation of the practitioner's license may be justified, or in the event of a violation of the authorized terms of the probation, the committee shall present to the Board in writing its findings, and the Board may proceed with a hearing in like manner and with the same effect as provided for a hearing on charges made directly to the Board.

If after such informal conference, the majority of the committee agrees that the information is without foundation, or that, if true, the facts do not merit a formal hearing before the Board, the committee shall *enter written findings of fact and* either:

1. Notify the practitioner in writing that he is fully exonerated of any charge that might affect his right to practice in the Commonwealth;
2. Reprimand or censure the practitioner;
3. Place the practitioner on probation for such time as it may designate, and direct that during such period he furnish the committee or its chairman, at specified intervals, evidence that he is not practicing his profession in violation of this chapter.

When a practitioner is charged with using intoxicating liquors, narcotics or other drugs to the extent that he is rendered unsafe to practice his profession, and the committee recommends treatment for the practitioner, the practitioner shall also furnish the committee or its chairman, at specified intervals, evidence that he is undergoing such treatment.

If the practitioner is reprimanded, censured, or placed on probation by the committee, he may, within thirty days from the date he receives written notice of the action of the committee, notify the chairman in writing that he desires a hearing before the Board, and the committee shall present to the Board in writing its findings and the request for a hearing. The Board shall proceed with a hearing in like manner and with the same effect as is provided for a hearing on charges made directly to the Board. Upon the filing with the committee of the request of the practitioner for a hearing before the Board and the filing with the Board of its findings, all actions of the committee shall be vacated. The action of the committee shall become final at the expiration of the thirty-day period if no request for a hearing before the Board is made within such period.

Whenever a special committee imposes a reprimand, censure or probation, and that disposition is not appealed to the Board, or whenever the Board imposes revocation, suspension, reprimand, censure or probation, the findings and disposition of the complaint shall be mailed by the Board to the complainant.

If the medical member of the Board from the district in which the practitioner involved resides is not named as a member of the committee, he shall have the right to sit with the committee at the conference, but without any vote in the proceedings.

§ 54.1-2920. Notice and opportunity to be heard required before suspension or revocation of license; exception; allegations to be in writing; practice pending appeal.

The Board shall take no action to revoke or suspend the license of any of its licensees except after reasonable notice and an opportunity to be heard in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.). Such action may be in addition to any penalty imposed by law for the violation. For the purposes of this section, reasonable notice means written notice mailed at least thirty days prior to the scheduled hearing.

However, the Board may suspend the license of any person licensed hereunder, without a hearing simultaneously with the institution of proceedings for a hearing, if it finds that there is a substantial danger to the public health or safety which warrants this action. The Board may meet by telephone conference call when summarily suspending a license, 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 Executive Committee, the continued practice of the practitioner 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.

Allegations of violations of this chapter shall be in writing to the Board or any member thereof.

Any practitioner whose license is suspended or revoked by the Board shall not engage in the practice of any of the healing arts in the Commonwealth pending his appeal.

Whenever any license suspension or revocation becomes final, the practitioner shall forthwith give notice of that action, by certified mail, to all patients to whom he is currently providing services. Such practitioner shall cooperate with other practitioners to ensure continuation of treatment in conformity with the wishes of the patient. Such practitioner shall also notify any hospitals or other facilities where he is currently granted privileges, and any health insurance companies, health insurance administrators or health maintenance organizations currently reimbursing him for any of the healing arts.