

VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 564

An Act to amend and reenact §§ 54.1-2400, 54.1-2401, 54.1-2919, and 54.1-3010 of the Code of Virginia, relating to proceedings of health regulatory boards.

[S 887]

Approved March 20, 1997

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2400, 54.1-2401, 54.1-2919, and 54.1-3010 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 or licensure 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 or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.

3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.

4. To establish schedules for renewals of registration, certification and licensure.

5. To levy and collect fees for application processing, examination, registration, certification or licensure 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 (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. 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.) of this title.

7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.

8. To take appropriate disciplinary action for violations of applicable law and regulations.

9. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*

10. To convene, at their discretion, a panel consisting of at least five board members, or, if a quorum of the board is less than five members, consisting of a quorum of the members, to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.

§ 54.1-2401. Monetary penalty.

Any person licensed, registered or certified by any health regulatory board who violates any provision of statute or regulation pertaining to that board and who is not criminally prosecuted, may be subject to the monetary penalty provided in this section. If the board or any special conference committee convened pursuant to ~~§ 54.1-3010~~ determines that a respondent has violated any provision of statute or regulation pertaining to the board, it shall determine the amount of any monetary penalty to be imposed for the violation, which shall not exceed \$1,000 for each violation. The penalty may be sued for and recovered in the name of the Commonwealth. All such monetary penalties shall be deposited in the Literary Fund.

§ 54.1-2919. Procedure upon information that practitioner may be subject to disciplinary action; special conference 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 *conference* 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 *conference* 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 to:~~

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; *and*
4. *Modify a previous order.*

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~~ *is served with* 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. *If service of the decision to the practitioner is accomplished by mail, three days shall be added to the thirty-day period.* 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 *conference* 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.

§ 54.1-3010. Special conference committee; appointment of members and chairman; notice to practitioner and request for conference; conference committee findings; further proceedings.

Upon receipt of information that a practitioner may be subject to disciplinary action by the Board for any of the grounds set forth in this chapter, the President of the Board may appoint a special conference committee to act in accordance with § 9-6.14:11. This special conference committee shall consist of no fewer than two members of the Board of Nursing, one of whom shall be designated as chairman.

The administrative officer of the Board shall notify the chairman of the special conference committee of his appointment and the appointment of all co-members. The administrative officer of the Board shall transmit to the chairman the information which initiated the appointment of the special conference committee.

The administrative officer shall mail to the practitioner who is the subject of the conference a statement of such information and a request for a conference with the committee at a time and place to be specified in the request. A statement of the action the conference committee is authorized to take shall also be included.

After the conference, if the conference committee finds that there is insufficient evidence to warrant further action or that the charges are without foundation, the conference committee shall notify the practitioner by mail that his record has been cleared of any charge which might affect his right to practice nursing in the Commonwealth. However, if the conference committee finds that disciplinary action is warranted, the committee may (i) place the practitioner on probation with such terms as it may deem appropriate; (ii) reprimand the practitioner; *(iii) modify a previous order;* and ~~(iii)~~ (iv) impose a monetary penalty pursuant to § 54.1-2401; or ~~(iv)~~ (v) refer the case to the Board of Nursing or a panel thereof for formal hearing.

If the practitioner is placed on probation, reprimanded, or a monetary penalty is imposed, the terms of the conference committee's order shall be simultaneously served on the practitioner by mail and entered on the record. Within thirty-three days from the date of entry of the order incorporating the conference committee's decision, the practitioner shall notify the administrative officer of the Board in writing that he does not consent to the committee's order and that he desires a hearing before the Board or a panel thereof. The order of the conference committee shall become final upon the expiration of the thirty-three-day period unless a request for a formal hearing is received within such time. Upon receiving *a* timely request for a hearing, the Board or a panel of the Board shall then proceed with a hearing as provided in § 9-6.14:12.