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HOUSE BILL NO. 843

House Amendments in [] — February 2, 1998

A BILL to amend and reenact §§ 32.1-111.4, 32.1-111.5, 54.1-2901, 54.1-2982, 54.1-2987.1, 54.1-2988 and 54.1-2989 of the Code of Virginia, relating to Do Not Resuscitate Orders.

Patron—Orrock

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-111.4, 32.1-111.5, 54.1-2901, 54.1-2982, 54.1-2987.1, 54.1-2988 and 54.1-2989 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-111.4. Regulations; emergency medical services personnel and vehicles.

A. The State Board of Health shall prescribe by regulation:

1. Requirements for record keeping, supplies, operating procedures and other agency operations;

2. Requirements for the sanitation and maintenance of emergency medical services vehicles and their medical supplies and equipment;

3. Procedures, including the requirements for forms, to authorize qualified emergency medical services personnel to follow ~~Emergency Medical Services~~ Do Not Resuscitate Orders pursuant to § 54.1-2987.1;

4. Requirements for the composition, administration, duties and responsibilities of the State Emergency Medical Services Advisory Board;

5. Requirements, developed in consultation with the Emergency Medical Services Advisory Board, governing the certification and recertification of emergency medical services personnel; and

6. Requirements for written notification to the State Emergency Medical Services Advisory Board, the State Office of Emergency Medical Services, and the Financial Assistance and Review Committee of the Board's action, and the reasons therefor, on requests and recommendations of the Advisory Board, the State Office of Emergency Medical Services or the Committee, no later than five workdays after reaching its decision, specifying whether the Board has approved, denied, or not acted on such requests and recommendations.

B. The Board shall classify agencies and emergency medical services vehicles by type of service rendered and shall specify the medical equipment, the supplies, the vehicle specifications and the personnel required for each classification.

C. In formulating its regulations, the Board shall consider the current Minimal Equipment List for Ambulances adopted by the Committee on Trauma of the American College of Surgeons.

§ 32.1-111.5. Certification and recertification of emergency medical services personnel.

A. The Board shall prescribe by regulation the qualifications required for certification of emergency medical care attendants, including those qualifications necessary for authorization to follow ~~Emergency Medical Services~~ Do Not Resuscitate Orders pursuant to § 54.1-2987.1.

B. Each person desiring certification as emergency medical services personnel shall apply to the Commissioner upon a form prescribed by the Board. Upon receipt of such application, the Commissioner shall cause the applicant to be examined or otherwise determined to be qualified for certification. If the Commissioner determines that the applicant meets the requirements of such regulations, he shall issue a certificate to the applicant. An emergency medical services personnel certificate so issued shall be valid for a period required by law or prescribed by the Board. The certificates may be renewed after successful reexamination of the holder. Any certificate so issued may be suspended at any time that the Commissioner determines that the holder no longer meets the qualifications prescribed for such emergency medical services personnel.

C. The Board shall prescribe by regulation procedures and the qualifications required for the recertification of emergency medical services personnel. Such regulations shall include (i) authorization for continuing education and skills testing, in lieu of a written examination, with the signature of the relevant operational medical director; (ii) authorization for the relevant operational medical director to require the written examinations administered or approved by the Office of Emergency Medical Services, as deemed necessary, of certain emergency medical services personnel; (iii) authorization for exemptions from the written test for recertification by the relevant operational medical director; (iv) triennial recertification of advanced life support providers; (v) approval by the Office of Emergency Medical Services of continuing education modules in which each module may be tested separately; and (vi) effective on January 1, 1998, a sequential option for the completion of the skills tests for recertification.

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- 60 D. The Commissioner may issue a temporary certificate when he finds that it is in the public interest.
61 A temporary certificate shall be valid for a period not exceeding ninety days.
62 § 54.1-2901. Exceptions and exemptions generally.
63 The provisions of this chapter shall not prevent or prohibit:
64 1. Any person entitled to practice his profession under any prior law on June 24, 1944, from
65 continuing such practice within the scope of the definition of his particular school of practice;
66 2. Any person licensed to practice naturopathy prior to June 30, 1980, from continuing such practice
67 in accordance with regulations promulgated by the Board;
68 3. Any licensed nurse practitioner from rendering care under the supervision of a duly licensed
69 physician when such services are authorized by regulations promulgated jointly by the Board of
70 Medicine and the Board of Nursing;
71 4. Any registered professional nurse, registered midwife, licensed nurse practitioner, graduate
72 laboratory technician or other technical personnel who have been properly trained from rendering care or
73 services within the scope of their usual professional activities which shall include the taking of blood,
74 the giving of intravenous infusions and intravenous injections, and the insertion of tubes when
75 performed under the orders of a person licensed to practice medicine;
76 5. Any dentist, pharmacist or optometrist from rendering care or services within the scope of his
77 usual professional activities;
78 6. Any practitioner licensed or certified by the Board from delegating to personnel in his personal
79 employ and supervised by him, such activities or functions as are nondiscretionary and do not require
80 the exercise of professional judgment for their performance and which are usually or customarily
81 delegated to such persons by practitioners of the healing arts, if such activities or functions are
82 authorized by and performed for such practitioners of the healing arts and responsibility for such
83 activities or functions is assumed by such practitioners of the healing arts;
84 7. The rendering of medical advice or information through telecommunications from a physician
85 licensed to practice medicine in Virginia or an adjoining state to emergency medical personnel acting in
86 an emergency situation;
87 8. The domestic administration of family remedies;
88 9. The giving or use of massages, steam baths, dry heat rooms, infrared heat or ultraviolet lamps in
89 public or private health clubs and spas;
90 10. The manufacture or sale of proprietary medicines in this Commonwealth by licensed pharmacists
91 or druggists;
92 11. The advertising or sale of commercial appliances or remedies;
93 12. The fitting by nonitinerant persons or manufacturers of artificial eyes, limbs or other apparatus or
94 appliances or the fitting of plaster cast counterparts of deformed portions of the body by a nonitinerant
95 bracer or prosthetist for the purpose of having a three-dimensional record of the deformity, when
96 such bracer or prosthetist has received a prescription from a licensed physician directing the fitting
97 of such casts and such activities are conducted in conformity with the laws of Virginia;
98 13. Any person from the rendering of first aid or medical assistance in an emergency in the absence
99 of a person licensed to practice medicine or osteopathy under the provisions of this chapter;
100 14. The practice of the religious tenets of any church in the ministration to the sick and suffering by
101 mental or spiritual means without the use of any drug or material remedy, whether gratuitously or for
102 compensation;
103 15. Any legally qualified out-of-state or foreign practitioner from meeting in consultation with legally
104 licensed practitioners in this Commonwealth;
105 16. Any practitioner of the healing arts licensed or certified and in good standing with the applicable
106 regulatory agency in another state or Canada when that practitioner of the healing arts is in Virginia
107 temporarily and such practitioner has been issued a temporary license or certification by the Board from
108 practicing medicine or the duties of the profession for which he is licensed or certified (i) in a summer
109 camp or in conjunction with patients who are participating in recreational activities, (ii) while
110 participating in continuing educational programs prescribed by the Board, or (iii) by rendering at any
111 site any health care services within the limits of his license, voluntarily and without compensation, to
112 any patient of any clinic which is organized in whole or in part for the delivery of health care services
113 without charge as provided in § 54.1-106;
114 17. The performance of the duties of any commissioned or contract medical officer, physical
115 therapist, or podiatrist in active service in the army, navy, coast guard, marine corps, air force, or public
116 health service of the United States while such individual is so commissioned or serving;
117 18. Any masseur, who publicly represents himself as such, from performing services within the scope
118 of his usual professional activities and in conformance with state law;
119 19. Any person from performing services in the lawful conduct of his particular profession or
120 business under state law;
121 20. Any person from rendering emergency care pursuant to the provisions of § 8.01-225;

21. Qualified emergency medical personnel from following ~~Emergency Medical Services Do Not Resuscitate Orders~~ in accordance with § 54.1-2987.1 *and Board of Health regulations*;

22. Any visiting or home care nurse licensed by the Board of Nursing acting in compliance with the written order of the attending physician not to resuscitate a patient in the event of cardiac or respiratory arrest;

23. Any commissioned or contract medical officer of the army, navy, coast guard or air force rendering services voluntarily and without compensation while deemed to be licensed pursuant § 54.1-106;

24. Any provider of a chemical dependency treatment program who is certified as an "acupuncture detoxification specialist" by the National Acupuncture Detoxification Association or an equivalent certifying body, from administering auricular acupuncture treatment under the appropriate supervision of a licensed physician acupuncturist or licensed acupuncturist;

25. Any employee of any adult care residence who is certified in cardiopulmonary resuscitation (CPR) acting in compliance with the patient's individualized service plan and with the written order of the attending physician not to resuscitate a patient in the event of cardiac or respiratory arrest; or

26. Any person working as a health assistant under the direction of a licensed medical or osteopathic doctor within the Department of Corrections, the Department of Juvenile Justice or local correctional facilities.

§ 54.1-2982. Definitions.

As used in this article:

"Advance directive" means (i) a witnessed written document, voluntarily executed by the declarant in accordance with the requirements of § 54.1-2983, or (ii) a witnessed oral statement, made by the declarant subsequent to the time he is diagnosed as suffering from a terminal condition and in accordance with the provisions of § 54.1-2983.

"Agent" means an adult appointed by the declarant under an advance directive, executed or made in accordance with the provisions of § 54.1-2983, to make health care decisions for him. The declarant may also appoint an adult to make, after the declarant's death, an anatomical gift of all or any part of his body pursuant to Article 2 (§ 32.1-289 et seq.) of Chapter 8 of Title 32.1.

"Attending physician" means the primary physician who has responsibility for the treatment and care of the patient.

"Declarant" means an adult who makes an advance directive, as defined in this article, while capable of making and communicating an informed decision.

"~~Emergency Medical Services Do Not Resuscitate Order~~" means a written *attending* physician's order in a form approved by the Board of Health which authorizes qualified emergency medical service personnel or hospital emergency department health care providers, *with the consent of the patient or the person authorized to consent for the patient*, to withhold cardiopulmonary resuscitation from a particular patient in the event of cardiac or respiratory arrest. For purposes of this article, cardiopulmonary resuscitation shall include cardiac compression, endotracheal intubation and other advanced airway management, artificial ventilation, and defibrillation and related procedures. ~~Emergency Medical Services Do Not Resuscitate Orders shall not authorize the withholding of other medical interventions, such as intravenous fluids, oxygen or other therapies deemed necessary to provide comfort care or to alleviate pain.~~

"Incapable of making an informed decision" means the inability of an adult patient, because of mental illness, mental retardation, or any other mental or physical disorder which precludes communication or impairs judgment and which has been diagnosed and certified in writing by his attending physician and a second physician or licensed clinical psychologist after personal examination of such patient, to make an informed decision about providing, withholding or withdrawing a specific medical treatment or course of treatment because he is unable to understand the nature, extent or probable consequences of the proposed medical decision, or to make a rational evaluation of the risks and benefits of alternatives to that decision. For purposes of this article, persons who are deaf, dysphasic or have other communication disorders, who are otherwise mentally competent and able to communicate by means other than speech, shall not be considered incapable of making an informed decision.

"Life-prolonging procedure" means any medical procedure, treatment or intervention which (i) utilizes mechanical or other artificial means to sustain, restore or supplant a spontaneous vital function, or is otherwise of such a nature as to afford a patient no reasonable expectation of recovery from a terminal condition and (ii) when applied to a patient in a terminal condition, would serve only to prolong the dying process. The term includes artificially administered hydration and nutrition. However, nothing in this act shall prohibit the administration of medication or the performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain, including the administration of excess dosages of pain relieving medications in accordance with § 54.1-3408.1. For purposes of §§ 54.1-2988, 54.1-2989, and 54.1-2991, the term also shall include cardiopulmonary resuscitation by emergency

183 medical services personnel.

184 "Persistent vegetative state" means a condition caused by injury, disease or illness in which a patient
185 has suffered a loss of consciousness, with no behavioral evidence of self-awareness or awareness of
186 surroundings in a learned manner, other than reflex activity of muscles and nerves for low level
187 conditioned response, and from which, to a reasonable degree of medical probability, there can be no
188 recovery.

189 "Physician" means a person licensed to practice medicine in the Commonwealth of Virginia or in the
190 jurisdiction where the treatment is to be rendered or withheld.

191 "Qualified patient" means a patient who has made an advance directive in accordance with this
192 article and either (i) has been diagnosed and certified in writing by the attending physician and a second
193 physician or licensed clinical psychologist after personal examination to be incapable of making an
194 informed decision about providing, withholding or withdrawing a specific medical treatment or course of
195 treatment, in accordance with § 54.1-2986, or (ii) has been diagnosed and certified in writing by the
196 attending physician to be afflicted with a terminal condition.

197 "Terminal condition" means a condition caused by injury, disease or illness from which, to a
198 reasonable degree of medical probability a patient cannot recover and (i) the patient's death is imminent
199 or (ii) the patient is in a persistent vegetative state.

200 "Witness" means a person who is not a spouse or blood relative of the patient. Employees of health
201 care facilities and physician's offices, who act in good faith, shall be permitted to serve as witnesses for
202 purposes of this article.

203 § 54.1-2987.1. Do Not Resuscitate Orders.

204 Qualified emergency medical services personnel or hospital emergency department health care
205 providers shall be authorized to follow Emergency Medical Services Do Not Resuscitate Orders
206 pertaining to qualified patients in the pre-hospital or hospital emergency department setting in
207 accordance with regulations promulgated by the Board of Health, if the order available to such personnel
208 is in a form approved by the Board of Health.

209 For the purposes of this section, an Emergency Medical Services A Do Not Resuscitate Order may
210 be issued for qualified patients by an attending physician for his patient who are individuals is
211 diagnosed to be afflicted with a terminal conditions condition or patients for whom attending physicians
212 have he has otherwise issued a Do Not Resuscitate Orders Order and only with the consent of the
213 patient or, if the patient is incapable of making an informed decision regarding consent for such an
214 order, of the person authorized to consent on the patient's behalf.

215 This section shall not authorize emergency medical personnel or hospital emergency department
216 health care providers to follow an Emergency Medical Services a Do Not Resuscitate Order for any
217 patient (i) who is able to, and does, express or (ii) if the patient is incapable of making an informed
218 decision, the person authorized to consent on the patient's behalf expresses to such emergency medical
219 services personnel or hospital emergency department health care providers the desire to be resuscitated
220 prior to cardiac or respiratory arrest. The expression of such desire to be resuscitated prior to cardiac or
221 respiratory arrest shall constitute revocation of the order; however, a new order may be issued upon
222 consent of the patient or the person authorized to consent on the patient's behalf.

223 Nothing in this section or the definition of Emergency Medical Services Do Not Resuscitate Orders
224 provided in § 54.1-2982 shall be construed to limit the issuance of or the authorization of physicians and
225 those persons designated in § 54.1-2901 to follow Do Not Resuscitate Orders other than Emergency
226 Medical Services Do Not Resuscitate Orders issued in accordance with this section by an attending
227 physician shall be valid in any prehospital setting or facility licensed by the Board of Health or
228 operated or licensed by the Board of Mental Health, Mental Retardation and Substance Abuse Services
229 or operated or licensed or owned by another state agency unless consent to such Do Not Resuscitate
230 Order has been revoked by the patient or the person authorized to consent for the patient.

231 Qualified emergency medical services shall be authorized to follow Do Not Resuscitate Orders
232 pertaining to patients in the prehospital setting in accordance with this section and the regulations
233 promulgated by the Board of Health, if the order available to such personnel is in a form approved by
234 the Board of Health. Emergency medical services personnel shall not, however, be authorized to
235 withhold other medical interventions, such as intravenous fluids, oxygen or other therapies deemed
236 necessary to provide comfort care or to alleviate pain.

237 For the purposes of this section, "person authorized to consent on the patient's behalf" means [(i) in
238 the case of a minor child, the parent or parents having custody of the minor child or the child's legal
239 guardian, or (ii) in the case of any patient,] any person authorized by law to consent on behalf of the
240 patient incapable of making an informed decision.

241 § 54.1-2988. Immunity from liability; burden of proof; presumption.

242 A health care facility, physician or other person acting under the direction of a physician shall not be
243 subject to criminal prosecution or civil liability or be deemed to have engaged in unprofessional conduct
244 as a result of the withholding or the withdrawal of life-prolonging procedures under authorization

obtained in accordance with this article. No person or facility providing, withholding or withdrawing treatment under authorization obtained pursuant to this article shall incur liability arising out of a claim to the extent the claim is based on lack of consent or authorization for such action.

A person who authorizes the providing, withholding or withdrawal of life-prolonging procedures in accordance with a qualified patient's advance directive or as provided in § 54.1-2986 or § 54.1-2987.1 shall not be subject to (i) criminal prosecution or civil liability for such action or (ii) liability for the cost of treatment solely on the basis of that authorization.

The provisions of this section shall apply unless it is shown by a preponderance of the evidence that the person authorizing or effectuating the withholding or withdrawal of life-prolonging procedures, or making or following an ~~Emergency Medical Services~~ Do Not Resuscitate Order in accordance with § 54.1-2987.1 did not, in good faith, comply with the provisions of this article. The distribution to patients of written advance directives in a form provided in § 54.1-2984 and assistance to patients in the completion and execution of such forms by health care providers shall not constitute the unauthorized practice of law pursuant to Chapter 39 (§ 54.1-3900 et seq.) of this title.

An advance directive made in accordance with this article shall be presumed to have been made voluntarily by a competent adult. Authorization for the providing, withholding or withdrawal of life-prolonging procedures in accordance with this article shall be presumed to have been made in good faith.

§ 54.1-2989. Willful destruction, concealment, etc., of declaration or revocation; penalties.

Any person who willfully conceals, cancels, defaces, obliterates, or damages the advance directive or ~~Emergency Medical Services~~ Do Not Resuscitate Order of another without the declarant's or patient's consent or who falsifies or forges a revocation of the advance directive or ~~Emergency Medical Services~~ Do Not Resuscitate Order of another, thereby causing life-prolonging procedures to be utilized in contravention of the previously expressed intent of the patient or an ~~Emergency Medical Services~~ Do Not Resuscitate Order shall be guilty of a Class 6 felony.

Any person who falsifies or forges the advance directive or ~~Emergency Medical Services~~ Do Not Resuscitate Order of another, or willfully conceals or withholds personal knowledge of the revocation of an advance directive or ~~Emergency Medical Services~~ Do Not Resuscitate Order, with the intent to cause a withholding or withdrawal of life-prolonging procedures, contrary to the wishes of the declarant or an ~~Emergency Medical Services~~ a Do Not Resuscitate Order, and thereby, because of such act, directly causes life-prolonging procedures to be withheld or withdrawn and death to be hastened, shall be guilty of a Class 2 felony.

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