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HOUSE BILL NO. 1250**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee on Health, Welfare and Institutions)

(Patron Prior to Substitute—Delegate Brink)

House Amendments in [] — February 12, 2000

A BILL to amend and reenact §§ 54.1-2900, 54.1-2901, 54.1-2956.9, and 54.1-2956.11 of the Code of Virginia, relating to the practice of acupuncture.

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2900, 54.1-2901, 54.1-2956.9, and 54.1-2956.11 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2900. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Acupuncturist" means individuals approved by the Board to practice acupuncture. This is limited to "licensed acupuncturist," which means an individual other than a doctor of medicine, osteopathy, chiropractic or podiatry who has successfully completed the requirements for licensure established by the Board (approved titles are limited to: Licensed Acupuncturist, Lic.Ac., and L.Ac.) and "physician acupuncturist" which means doctors of medicine, osteopathy, chiropractic and podiatry who have fulfilled the physician requirements for licensure to practice acupuncture established by the Board.

"Auricular acupuncture" means the subcutaneous insertion of sterile, disposable acupuncture needles in predetermined, bilateral locations in the outer ear when used exclusively and specifically in the context of an approved chemical dependency treatment program, under the appropriate supervision of a licensed physician acupuncturist or licensed acupuncturist.

"Board" means the Board of Medicine.

"Healing arts" means the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities.

"Physician assistant" means an individual who has met the requirements of the Board for licensure and who works under the supervision of a licensed doctor of medicine, osteopathy, or podiatry.

"Practice of acupuncture" means the stimulation of certain points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain ailments or conditions of the body and includes the techniques of electroacupuncture, cupping and moxibustion. The practice of acupuncture does not include the use of physical therapy, chiropractic, or osteopathic manipulative techniques; the use or prescribing of any drugs, medications, serums or vaccines; or the procedure of auricular acupuncture as exempted in § 54.1-2901 when used specifically and exclusively in the context of a publicly supported comprehensive drug treatment program by an employee of the program who is trained and approved by the National Acupuncture Detoxification Association.

"Practice of athletic training" means the prevention, recognition, evaluation, and treatment of injuries or conditions related to athletic or recreational activity that requires physical skill and utilizes strength, power, endurance, speed, flexibility, range of motion or agility or a substantially similar injury or condition resulting from occupational activity immediately upon the onset of such injury or condition; and subsequent treatment and rehabilitation of such injuries or conditions under the direction of a licensed physical therapist and the patient's physician or under the direction of any doctor of medicine, osteopathy, chiropractic, podiatry, or dentistry, while using heat, light, sound, cold, electricity, exercise or mechanical or other devices.

"Practice of chiropractic" means the adjustment of the twenty-four movable vertebrae of the spinal column, and assisting nature for the purpose of normalizing the transmission of nerve energy, but does not include the use of surgery, obstetrics, osteopathy or the administration or prescribing of any drugs, medicines, serums or vaccines.

"Practice of medicine or osteopathic medicine" means the prevention, diagnosis and treatment of human physical or mental ailments, conditions, diseases, pain or infirmities by any means or method.

"Practice of occupational therapy" means the evaluation, analysis, assessment, and delivery of education and training in activities of daily living (ADL); the design, fabrication, and application of orthoses (splints); guidance in the selection and use of adaptive equipment; therapeutic activities to enhance functional performance; prevocational evaluation and training; and consultation concerning the adaptation of physical environments for individuals who have disabilities.

"Practice of physical therapy" means, upon medical referral and direction, the evaluation, testing, treatment, reeducation and rehabilitation by physical, mechanical or electronic measures and procedures of individuals who, because of trauma, disease or birth defect, present physical and emotional disorders, but does not include the use of Roentgen rays and radium for diagnostic or therapeutic purposes or the

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60 use of electricity for shock therapy and surgical purposes including cauterization.

61 "Practice of podiatry" means the medical, mechanical and surgical treatment of the ailments of the
62 human foot and ankle, but does not include amputation proximal to the metatarsal-phalangeal joints. The
63 Board of Medicine shall determine whether a specific type of treatment of the foot and ankle is within
64 the scope of practice of podiatry.

65 "Practice of radiologic technology" means the application of x-rays to human beings for diagnostic or
66 therapeutic purposes.

67 "Practice of respiratory care" means the (i) administration of pharmacological, diagnostic, and
68 therapeutic agents related to respiratory care procedures necessary to implement a treatment, disease
69 prevention, pulmonary rehabilitative, or diagnostic regimen prescribed by a practitioner of medicine or
70 osteopathic medicine; (ii) transcription and implementation of the written or verbal orders of a
71 practitioner of medicine or osteopathic medicine pertaining to the practice of respiratory care; (iii)
72 observation and monitoring of signs and symptoms, general behavior, general physical response to
73 respiratory care treatment and diagnostic testing, including determination of whether such signs,
74 symptoms, reactions, behavior or general physical response exhibit abnormal characteristics; and (iv)
75 implementation of respiratory care procedures, based on observed abnormalities, or appropriate reporting,
76 referral, respiratory care protocols or changes in treatment pursuant to the written or verbal orders by a
77 licensed practitioner of medicine or osteopathic medicine or the initiation of emergency procedures,
78 pursuant to the Board's regulations or as otherwise authorized by law. The practice of respiratory care
79 may be performed in any clinic, hospital, skilled nursing facility, private dwelling or other place deemed
80 appropriate by the Board in accordance with the written or verbal order of a practitioner of medicine or
81 osteopathic medicine, and shall be performed under qualified medical direction.

82 "Qualified medical direction" means, in the context of the practice of respiratory care, having readily
83 accessible to the respiratory care practitioner a licensed practitioner of medicine or osteopathic medicine
84 who has specialty training or experience in the management of acute and chronic respiratory disorders
85 and who is responsible for the quality, safety, and appropriateness of the respiratory services provided
86 by the respiratory care practitioner.

87 "Radiologic technologist" means an individual, other than a licensed doctor of medicine, osteopathy,
88 podiatry, or chiropractic, or a dentist licensed pursuant to Chapter 27 (§ 54.1-2700 et seq.) of this title,
89 who (i) performs, may be called upon to perform, or who is licensed to perform a comprehensive scope
90 of diagnostic radiologic procedures employing equipment which emits ionizing radiation and (ii) is
91 delegated or exercises responsibility for the operation of radiation-generating equipment, the shielding of
92 patient and staff from unnecessary radiation, the appropriate exposure of radiographs or other procedures
93 which contribute to any significant extent to the site or dosage of ionizing radiation to which a patient is
94 exposed.

95 "Radiologic technologist, limited" means an individual, other than a licensed radiologic technologist,
96 dental hygienist or person who is otherwise authorized by the Board of Dentistry under Chapter 27 of
97 this title and the regulations pursuant thereto, who performs diagnostic radiographic procedures
98 employing equipment which emits ionizing radiation which is limited to specific areas of the human
99 body.

100 "Respiratory care" means the practice of the allied health profession responsible for the direct and
101 indirect services, including inhalation therapy and respiratory therapy, in the treatment, management,
102 diagnostic testing, control and care of patients with deficiencies and abnormalities associated with the
103 cardiopulmonary system under qualified medical direction.

104 § 54.1-2901. Exceptions and exemptions generally.

105 The provisions of this chapter shall not prevent or prohibit:

106 1. Any person entitled to practice his profession under any prior law on June 24, 1944, from
107 continuing such practice within the scope of the definition of his particular school of practice;

108 2. Any person licensed to practice naturopathy prior to June 30, 1980, from continuing such practice
109 in accordance with regulations promulgated by the Board;

110 3. Any licensed nurse practitioner from rendering care under the supervision of a duly licensed
111 physician when such services are authorized by regulations promulgated jointly by the Board of
112 Medicine and the Board of Nursing;

113 4. Any registered professional nurse, registered midwife, licensed nurse practitioner, graduate
114 laboratory technician or other technical personnel who have been properly trained from rendering care or
115 services within the scope of their usual professional activities which shall include the taking of blood,
116 the giving of intravenous infusions and intravenous injections, and the insertion of tubes when
117 performed under the orders of a person licensed to practice medicine;

118 5. Any dentist, pharmacist or optometrist from rendering care or services within the scope of his
119 usual professional activities;

120 6. Any practitioner licensed or certified by the Board from delegating to personnel in his personal
121 employ and supervised by him, such activities or functions as are nondiscretionary and do not require

the exercise of professional judgment for their performance and which are usually or customarily delegated to such persons by practitioners of the healing arts, if such activities or functions are authorized by and performed for such practitioners of the healing arts and responsibility for such activities or functions is assumed by such practitioners of the healing arts;

7. The rendering of medical advice or information through telecommunications from a physician licensed to practice medicine in Virginia or an adjoining state to emergency medical personnel acting in an emergency situation;

8. The domestic administration of family remedies;

9. The giving or use of massages, steam baths, dry heat rooms, infrared heat or ultraviolet lamps in public or private health clubs and spas;

10. The manufacture or sale of proprietary medicines in this Commonwealth by licensed pharmacists or druggists;

11. The advertising or sale of commercial appliances or remedies;

12. The fitting by nonitinerant persons or manufacturers of artificial eyes, limbs or other apparatus or appliances or the fitting of plaster cast counterparts of deformed portions of the body by a nonitinerant bracer or prosthetist for the purpose of having a three-dimensional record of the deformity, when such bracer or prosthetist has received a prescription from a licensed physician directing the fitting of such casts and such activities are conducted in conformity with the laws of Virginia;

13. Any person from the rendering of first aid or medical assistance in an emergency in the absence of a person licensed to practice medicine or osteopathy under the provisions of this chapter;

14. The practice of the religious tenets of any church in the ministration to the sick and suffering by mental or spiritual means without the use of any drug or material remedy, whether gratuitously or for compensation;

15. Any legally qualified out-of-state or foreign practitioner from meeting in consultation with legally licensed practitioners in this Commonwealth;

16. Any practitioner of the healing arts licensed or certified and in good standing with the applicable regulatory agency in another state or Canada when that practitioner of the healing arts is in Virginia temporarily and such practitioner has been issued a temporary license or certification by the Board from practicing medicine or the duties of the profession for which he is licensed or certified (i) in a summer camp or in conjunction with patients who are participating in recreational activities, (ii) while participating in continuing educational programs prescribed by the Board, or (iii) by rendering at any site any health care services within the limits of his license, voluntarily and without compensation, to any patient of any clinic which is organized in whole or in part for the delivery of health care services without charge as provided in § 54.1-106;

17. The performance of the duties of any commissioned or contract medical officer, physical therapist, or podiatrist in active service in the army, navy, coast guard, marine corps, air force, or public health service of the United States while such individual is so commissioned or serving;

18. Any masseur, who publicly represents himself as such, from performing services within the scope of his usual professional activities and in conformance with state law;

19. Any person from performing services in the lawful conduct of his particular profession or business under state law;

20. Any person from rendering emergency care pursuant to the provisions of § 8.01-225;

21. Qualified emergency medical services personnel, when acting within the scope of their certification, and licensed health care practitioners, when acting within their scope of practice, from following Durable Do Not Resuscitate Orders issued in accordance with § 54.1-2987.1 and Board of Health regulations, or licensed health care practitioners from following any other written order of a physician not to resuscitate a patient in the event of cardiac or respiratory arrest;

22. 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 to § 54.1-106;

23. 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;

24. 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;

25. 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; or

26. Any employee of a school board, authorized by a prescriber and trained in the administration of

183 insulin and glucagon, when, upon the authorization of a prescriber and the written request of the parents
184 as defined in § 22.1-1, assisting with the administration of insulin or administering glucagon to a
185 student diagnosed as having diabetes and who requires insulin injections during the school day or for
186 whom glucagon has been prescribed for the emergency treatment of hypoglycemia.

187 § 54.1-2956.9. Unlawful to practice acupuncture without license; unlawful designation as
188 acupuncturist; Board to regulate acupuncturists.

189 It shall be unlawful for a person to practice or to hold himself out as practicing as an acupuncturist
190 unless he holds a license as such issued by the Board. A person licensed to practice acupuncture, when
191 using the title "acupuncturist," shall include therewith the designation Lic.Ac.; *or* L.Ac.; ~~or P.Ac.~~

192 In addition, it shall be unlawful for any person who is not licensed under this chapter, whose
193 licensure has been suspended or revoked, or whose licensure has lapsed and has not been renewed to
194 use in conjunction with his name the words "licensed acupuncturist" or to otherwise by letters, words,
195 representations, or insignias assert or imply that he is licensed to practice acupuncture.

196 The Board of Medicine shall prescribe by regulation the qualifications governing the licensure of
197 acupuncturists. Such regulations shall not restrict the practice of this profession to practitioners regulated
198 by the Board on June 30, 1992, to practice the healing arts. The regulations shall at a minimum require
199 that, prior to performing acupuncture, any acupuncturist who is not licensed to practice medicine,
200 osteopathy, chiropractic or podiatry shall *either (i) obtain written documentation that the patient had*
201 *received a diagnostic examination from a licensed practitioner of medicine, osteopathy, chiropractic or*
202 *podiatry with regard to the ailment or condition to be treated, or (ii) provide to the patient a written*
203 *recommendation for such a diagnostic examination.* The regulations may include requirements for
204 approved education programs, experience, and examinations. *The regulations shall exempt from the*
205 *requirement for Test of Spoken English (TSE) or the Test of English as a Foreign Language (TOEFL)*
206 *any foreign speaking acupuncturist who speaks the language of the majority of his clients.*

207 § 54.1-2956.11. Advisory Committee on Acupuncture; composition; appointment.

208 The Advisory Committee on Acupuncture, hereinafter referred to as the "Advisory Committee," shall
209 assist the Board in carrying out the provisions of this chapter regarding the qualifications, examination,
210 licensure, and regulation of acupuncturists.

211 The Advisory Committee shall be appointed by the Board of Medicine and shall be composed of
212 seven members. Six of the members shall serve terms of four years each. Three of these six shall be
213 doctors of medicine, osteopathy, or podiatry who are ~~licensed~~ *qualified by Board regulations* to practice
214 acupuncture in Virginia, and three of these six shall be licensed acupuncturists. The seventh member
215 shall be a member of the Board of Medicine and shall serve at the pleasure of the president. Of the
216 initial members so appointed, the three licensed acupuncturists shall be individuals, other than licensed
217 practitioners of medicine, osteopathy, or podiatry, who are licensed to practice acupuncture in another
218 state but are residing in Virginia. Thereafter, the three members who are licensed acupuncturists shall be
219 residents of Virginia who are licensed as acupuncturists by the Board of Medicine and who are not also
220 licensed by the Board to practice medicine, osteopathy, or podiatry. Any vacancy occurring during a
221 member's term shall be filled for the unexpired balance of that term. No person shall be eligible to serve
222 on the Advisory Committee for more than two successive terms.

223 **2. That the Board of Medicine, in consultation with the Advisory Board on Acupuncture, shall**
224 **promulgate regulations, including education and training requirements for doctors of medicine,**
225 **osteopathy, chiropractic and podiatry who utilize acupuncture, [and including the requirement for**
226 **a standard form recommending a diagnostic examination for provision to the patient by the**
227 **acupuncturist,] to implement the provisions of this act within 280 days of enactment.**