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SENATE BILL NO. 405

Offered January 9, 2008

Prefiled January 8, 2008

A *BILL to amend and reenact §§ 18.2-258.1, 54.1-3310, 54.1-3408, and 54.1-3434.1 of the Code of Virginia, relating to prescription drugs; penalties.*

Patron—Puckett

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-258.1, 54.1-3310, 54.1-3408, and 54.1-3434.1 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-258.1. Obtaining drugs, procuring administration of controlled substances, etc., by fraud, deceit or forgery.

A. It shall be unlawful for any person to obtain or attempt to obtain any drug or procure or attempt to procure the administration of any controlled substance or marijuana: (i) by fraud, deceit, misrepresentation, embezzlement, or subterfuge; or (ii) by the forgery or alteration of a prescription or of any written order; or (iii) by the concealment of a material fact; or (iv) by the use of a false name or the giving of a false address.

B. It shall be unlawful for any person to furnish false or fraudulent information in or omit any information from, or willfully make a false statement in, any prescription, order, report, record, or other document required by Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1.

C. It shall be unlawful for any person to use in the course of the manufacture or distribution of a controlled substance or marijuana a license number which is fictitious, revoked, suspended, or issued to another person.

D. It shall be unlawful for any person, for the purpose of obtaining any controlled substance or marijuana, to falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian or other authorized person.

E. It shall be unlawful for any person to make or utter any false or forged prescription or false or forged written order.

F. It shall be unlawful for any person to affix any false or forged label to a package or receptacle containing any controlled substance.

G. This section shall not apply to officers and employees of the United States, of this Commonwealth or of a political subdivision of this Commonwealth acting in the course of their employment, who obtain such drugs for investigative, research or analytical purposes, or to the agents or duly authorized representatives of any pharmaceutical manufacturer who obtain such drugs for investigative, research or analytical purposes and who are acting in the course of their employment; provided that such manufacturer is licensed under the provisions of the Federal Food, Drug and Cosmetic Act; and provided further, that such pharmaceutical manufacturer, its agents and duly authorized representatives file with the Board such information as the Board may deem appropriate.

H. Except as otherwise provided in this subsection, any person who shall violate any provision herein shall be guilty of a Class 65 felony *for the first offense and a Class 4 felony for a second or subsequent offense.*

Whenever any person who has not previously been convicted of any offense under this article or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for violation of such an offense dismissed, or reduced as provided in this section, pleads guilty to or enters a plea of not guilty to the court for violating this section, upon such plea if the facts found by the court would justify a finding of guilt, the court may place him on probation upon terms and conditions.

As a term or condition, the court shall require the accused to be evaluated and enter a treatment and/or education program, if available, such as, in the opinion of the court, may be best suited to the needs of the accused. This program may be located in the judicial circuit in which the charge is brought or in any other judicial circuit as the court may provide. The services shall be provided by a program certified or licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services. The court shall require the person entering such program under the provisions of this section to pay all or part of the costs of the program, including the costs of the screening, evaluation, testing and education, based upon the person's ability to pay unless the person is determined by the court to be indigent.

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59 As a condition of supervised probation, the court shall require the accused to remain drug free during
60 the period of probation and submit to such tests during that period as may be necessary and appropriate
61 to determine if the accused is drug free. Such testing may be conducted by the personnel of any
62 screening, evaluation, and education program to which the person is referred or by the supervising
63 agency.

64 Unless the accused was fingerprinted at the time of arrest, the court shall order the accused to report
65 to the original arresting law-enforcement agency to submit to fingerprinting.

66 Upon violation of a term or condition, the court may enter an adjudication of guilt upon the felony
67 and proceed as otherwise provided. Upon fulfillment of the terms and conditions of probation, the court
68 shall find the defendant guilty of a Class 1 misdemeanor.

69 § 54.1-3310. Unlawful to practice without license; penalties.

70 A. Except as prescribed in this chapter or by Board regulations it shall be unlawful for any person to
71 practice pharmacy, or to engage in, carry on, or be employed in the dispensing, or compounding of
72 drugs within this Commonwealth unless licensed by the Board as a pharmacist. The possession by any
73 person in any place of a miscellaneous stock of drugs shall be prima facie evidence that such person is
74 practicing pharmacy.

75 B. *Any person who shall knowingly violate the provisions of this chapter or any provisions of the*
76 *Drug Control Act (§ 54.1-3400 et seq.) relevant to pharmacists shall be guilty of a Class 5 felony for*
77 *the first offense and a Class 4 felony for a second or subsequent offense. However, this subsection shall*
78 *not apply to any licensed pharmacist who inadvertently allows his license to lapse for a period of less*
79 *than 30 days.*

80 § 54.1-3408. Professional use by practitioners; penalties.

81 A. A practitioner of medicine, osteopathy, podiatry, dentistry, or veterinary medicine or a licensed
82 nurse practitioner pursuant to § 54.1-2957.01, a licensed physician assistant pursuant to § 54.1-2952.1, or
83 a TPA-certified optometrist pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of this title shall
84 only prescribe, dispense, or administer controlled substances in good faith for medicinal or therapeutic
85 purposes within the course of his professional practice.

86 B. The prescribing practitioner's order may be on a written prescription or pursuant to an oral
87 prescription as authorized by this chapter. The prescriber may administer drugs and devices, or he may
88 cause them to be administered by a nurse, physician assistant or intern under his direction and
89 supervision, or he may prescribe and cause drugs and devices to be administered to patients in
90 state-owned or state-operated hospitals or facilities licensed as hospitals by the Board of Health or
91 psychiatric hospitals licensed by the State Mental Health, Mental Retardation and Substance Abuse
92 Services Board by other persons who have been trained properly to administer drugs and who administer
93 drugs only under the control and supervision of the prescriber or a pharmacist or a prescriber may cause
94 drugs and devices to be administered to patients by emergency medical services personnel who have
95 been certified and authorized to administer such drugs and devices pursuant to Board of Health
96 regulations governing emergency medical services and who are acting within the scope of such
97 certification. A prescriber may authorize a licensed respiratory care practitioner as defined in
98 § 54.1-2954 to administer by inhalation controlled substances used in inhalation or respiratory therapy.

99 C. Pursuant to an oral or written order or standing protocol, the prescriber, who is authorized by
100 state or federal law to possess and administer radiopharmaceuticals in the scope of his practice, may
101 authorize a nuclear medicine technologist to administer, under his supervision, radiopharmaceuticals used
102 in the diagnosis or treatment of disease.

103 D. Pursuant to an oral or written order or standing protocol issued by the prescriber within the
104 course of his professional practice, such prescriber may authorize registered nurses and licensed practical
105 nurses to possess (i) epinephrine for administration in treatment of emergency medical conditions and
106 (ii) heparin and sterile normal saline to use for the maintenance of intravenous access lines.

107 Pursuant to the regulations of the Board of Health, certain emergency medical services technicians
108 may possess and administer epinephrine in emergency cases of anaphylactic shock.

109 E. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course
110 of his professional practice, such prescriber may authorize licensed physical therapists to possess and
111 administer topical corticosteroids, topical lidocaine, and any other Schedule VI topical drug.

112 F. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course
113 of his professional practice, such prescriber may authorize licensed athletic trainers to possess and
114 administer topical corticosteroids, topical lidocaine, or other Schedule VI topical drugs, or to possess and
115 administer epinephrine for use in emergency cases of anaphylactic shock.

116 G. Pursuant to an oral or written order or standing protocol issued by the prescriber within the
117 course of his professional practice, and in accordance with policies and guidelines established by the
118 Department of Health pursuant to § 32.1-50.2, such prescriber may authorize registered nurses or
119 licensed practical nurses under the immediate and direct supervision of a registered nurse to possess and
120 administer tuberculin purified protein derivative (PPD) in the absence of a prescriber. The Department of

Health's policies and guidelines shall be consistent with applicable guidelines developed by the Centers for Disease Control and Prevention for preventing transmission of mycobacterium tuberculosis and shall be updated to incorporate any subsequently implemented standards of the Occupational Safety and Health Administration and the Department of Labor and Industry to the extent that they are inconsistent with the Department of Health's policies and guidelines. Such standing protocols shall explicitly describe the categories of persons to whom the tuberculin test is to be administered and shall provide for appropriate medical evaluation of those in whom the test is positive. The prescriber shall ensure that the nurse implementing such standing protocols has received adequate training in the practice and principles underlying tuberculin screening.

The Health Commissioner or his designee may authorize registered nurses, acting as agents of the Department of Health, to possess and administer, at the nurse's discretion, tuberculin purified protein derivative (PPD) to those persons in whom tuberculin skin testing is indicated based on protocols and policies established by the Department of Health.

H. Pursuant to a written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize, with the consent of the parents as defined in § 22.1-1, an employee of a school board who is trained in the administration of insulin and glucagon to assist with the administration of insulin or administer glucagon to a student diagnosed as having diabetes and who requires insulin injections during the school day or for whom glucagon has been prescribed for the emergency treatment of hypoglycemia. Such authorization shall only be effective when a licensed nurse, nurse practitioner, physician or physician assistant is not present to perform the administration of the medication.

I. A prescriber may authorize, pursuant to a protocol approved by the Board of Nursing, the administration of vaccines to adults for immunization, when a practitioner with prescriptive authority is not physically present, (i) by licensed pharmacists, (ii) by registered nurses, or (iii) licensed practical nurses under the immediate and direct supervision of a registered nurse. A prescriber acting on behalf of and in accordance with established protocols of the Department of Health may authorize the administration of vaccines to any person by a pharmacist or nurse when the prescriber is not physically present.

J. A dentist may cause Schedule VI topical drugs to be administered under his direction and supervision by either a dental hygienist or by an authorized agent of the dentist.

Further, pursuant to a written order and in accordance with a standing protocol issued by the dentist in the course of his professional practice, a dentist may authorize a dental hygienist under his general supervision, as defined in § 54.1-2722, to possess and administer topical oral fluorides, topical oral anesthetics, topical and directly applied antimicrobial agents for treatment of periodontal pocket lesions, as well as any other Schedule VI topical drug approved by the Board of Dentistry.

In addition, a dentist may authorize a dental hygienist under his direction to administer Schedule VI nitrous oxide and oxygen inhalation analgesia and, to persons 18 years of age or older, Schedule VI local anesthesia.

K. (Contingent expiration date - See Editor's note) This section shall not prevent the administration of drugs by a person who has satisfactorily completed a training program for this purpose approved by the Board of Nursing and who administers such drugs in accordance with a physician's instructions pertaining to dosage, frequency, and manner of administration, and in accordance with regulations promulgated by the Board of Pharmacy relating to security and record keeping, when the drugs administered would be normally self-administered by (i) a resident of a facility licensed or certified by the State Mental Health, Mental Retardation and Substance Abuse Services Board; (ii) a resident of any assisted living facility which is licensed by the Department of Social Services; (iii) a resident of the Virginia Rehabilitation Center for the Blind and Vision Impaired; (iv) a resident of a facility approved by the Board or Department of Juvenile Justice for the placement of children in need of services or delinquent or alleged delinquent youth; (v) a program participant of an adult day-care center licensed by the Department of Social Services; or (vi) a resident of any facility authorized or operated by a state or local government whose primary purpose is not to provide health care services.

K. (Contingent effective date - see Editor's note) This section shall not prevent the administration of drugs by a person who has satisfactorily completed a training program for this purpose approved by the Board of Nursing and who administers such drugs in accordance with a physician's instructions pertaining to dosage, frequency, and manner of administration, and in accordance with regulations promulgated by the Board of Pharmacy relating to security and record keeping, when the drugs administered would be normally self-administered by (i) a resident of a facility licensed or certified by the Department of Mental Health, Mental Retardation and Substance Abuse Services; (ii) a resident of the Virginia Rehabilitation Center for the Blind and Vision Impaired; (iii) a resident of a facility approved by the Board or Department of Juvenile Justice for the placement of children in need of services or delinquent or alleged delinquent youth; (iv) a program participant of an adult day-care center

182 licensed by the Department of Social Services; or (v) a resident of any facility authorized or operated by
183 a state or local government whose primary purpose is not to provide health care services.

184 L. (Contingent effective date - see Editor's note) Medication aides registered by the Board of Nursing
185 pursuant to Article 7 (§ 54.1-3041 et seq.) of Chapter 30 may administer drugs that would otherwise be
186 self-administered to residents of any assisted living facility licensed by the Department of Social
187 Services. A registered medication aide shall administer drugs pursuant to this section in accordance with
188 the prescriber's instructions pertaining to dosage, frequency, and manner of administration; in accordance
189 with regulations promulgated by the Board of Pharmacy relating to security and recordkeeping; in
190 accordance with the assisted living facility's Medication Management Plan; and in accordance with such
191 other regulations governing their practice promulgated by the Board of Nursing.

192 M. In addition, this section shall not prevent the administration of drugs by a person who administers
193 such drugs in accordance with a physician's instructions pertaining to dosage, frequency, and manner of
194 administration and with written authorization of a parent, and in accordance with school board
195 regulations relating to training, security and record keeping, when the drugs administered would be
196 normally self-administered by a student of a Virginia public school. Training for such persons shall be
197 accomplished through a program approved by the local school boards, in consultation with the local
198 departments of health.

199 N. In addition, this section shall not prevent the administration of drugs by a person to a child in a
200 child day program as defined in § 63.2-100 and regulated by the State Board of Social Services or the
201 Child Day Care Council, provided such person (i) has satisfactorily completed a training program for
202 this purpose approved by the Board of Nursing and taught by a registered nurse, licensed practical
203 nurse, doctor of medicine or osteopathic medicine, or pharmacist; (ii) has obtained written authorization
204 from a parent or guardian; (iii) administers drugs only to the child identified on the prescription label in
205 accordance with the prescriber's instructions pertaining to dosage, frequency, and manner of
206 administration; and (iv) administers only those drugs that were dispensed from a pharmacy and
207 maintained in the original, labeled container that would normally be administered by a parent or
208 guardian to the child.

209 O. In addition, this section shall not prevent the administration or dispensing of drugs and devices by
210 persons if they are authorized by the State Health Commissioner in accordance with protocols
211 established by the State Health Commissioner pursuant to § 32.1-42.1 when (i) the Governor has
212 declared a disaster or a state of emergency or the United States Secretary of Health and Human Services
213 has issued a declaration of an actual or potential bioterrorism incident or other actual or potential public
214 health emergency; (ii) it is necessary to permit the provision of needed drugs or devices; and (iii) such
215 persons have received the training necessary to safely administer or dispense the needed drugs or
216 devices. Such persons shall administer or dispense all drugs or devices under the direction, control and
217 supervision of the State Health Commissioner.

218 P. Nothing in this title shall prohibit the administration of normally self-administered oral or topical
219 drugs by unlicensed individuals to a person in his private residence.

220 Q. This section shall not interfere with any prescriber issuing prescriptions in compliance with his
221 authority and scope of practice and the provisions of this section to a Board agent for use pursuant to
222 subsection G of § 18.2-258.1. Such prescriptions issued by such prescriber shall be deemed to be valid
223 prescriptions.

224 R. Nothing in this title shall prevent or interfere with dialysis care technicians or dialysis patient care
225 technicians who are certified by an organization approved by the Board of Health Professions or persons
226 authorized for provisional practice pursuant to Chapter 27.01 (§ 54.1-2729.1 et seq.) of this title, in the
227 ordinary course of their duties in a Medicare-certified renal dialysis facility, from administering heparin,
228 topical needle site anesthetics, dialysis solutions, sterile normal saline solution, and blood volumizers, for
229 the purpose of facilitating renal dialysis treatment, when such administration of medications occurs under
230 the orders of a licensed physician, nurse practitioner or physician assistant and under the immediate and
231 direct supervision of a licensed registered nurse. Nothing in this chapter shall be construed to prohibit a
232 patient care dialysis technician trainee from performing dialysis care as part of and within the scope of
233 the clinical skills instruction segment of a supervised dialysis technician training program, provided such
234 trainee is identified as a "trainee" while working in a renal dialysis facility.

235 The dialysis care technician or dialysis patient care technician administering the medications shall
236 have demonstrated competency as evidenced by holding current valid certification from an organization
237 approved by the Board of Health Professions pursuant to Chapter 27.01 (§ 54.1-2729.1 et seq.) of this
238 title.

239 S. Persons who are otherwise authorized to administer controlled substances in hospitals shall be
240 authorized to administer influenza or pneumococcal vaccines pursuant to § 32.1-126.4.

241 T. Pursuant to a specific order for a patient and under his direct and immediate supervision, a
242 prescriber may authorize the administration of controlled substances by personnel who have been
243 properly trained to assist a doctor of medicine or osteopathic medicine, provided the method does not

include intravenous, intrathecal, or epidural administration and the prescriber remains responsible for such administration.

U. A nurse or a dental hygienist may possess and administer topical fluoride varnish to the teeth of children aged six months to three years pursuant to an oral or written order or a standing protocol issued by a doctor of medicine or osteopathic medicine that conforms to standards adopted by the Virginia Department of Health.

V. *Any practitioner who violates this section with respect to a controlled substance classified in Schedule I or II of the Drug Control Act (§ 54.1-3400 et seq.) shall upon conviction be imprisoned for not less than five nor more than 40 years and fined not more than \$500,000, and upon a second or subsequent conviction, in the discretion of the court or jury imposing the sentence, be sentenced to imprisonment for life or for any period not less than five years and be fined not more than \$500,000. Any practitioner who violates this section with respect to a controlled substance classified in Schedule III, IV, or V of the Drug Control Act (§ 54.1-3400 et seq.) shall be guilty of a Class 5 felony.*

§ 54.1-3434.1. Nonresident pharmacies to register with Board.

A. Any pharmacy located outside the Commonwealth that ships, mails, or delivers, in any manner, Schedule II through VI drugs or devices pursuant to a prescription into the Commonwealth shall be considered a nonresident pharmacy, shall be registered with the Board, and shall disclose to the Board all of the following:

1. The location, names, and titles of all principal corporate officers and all pharmacists who are dispensing prescription drugs or devices to residents of the Commonwealth. A report containing this information shall be made on an annual basis and within 30 days after any change of office, corporate officer, or principal pharmacist.

2. That it maintains, at all times, a current unrestricted license, permit, certificate, or registration to conduct the pharmacy in compliance with the laws of the jurisdiction, within the United States or within another jurisdiction that may lawfully deliver prescription drugs directly or indirectly to consumers within the United States, in which it is a resident. The pharmacy shall also certify that it complies with all lawful directions and requests for information from the regulatory or licensing agency of the jurisdiction in which it is licensed as well as with all requests for information made by the Board pursuant to this section.

As a prerequisite to registering with the Board, the nonresident pharmacy shall submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the jurisdiction in which it is located. The inspection report shall be deemed current if the inspection was conducted within the past five years. However, if the nonresident pharmacy has not been inspected by the regulatory or licensing agency of the jurisdiction in which it is licensed within the past five years, the Board may accept an inspection report or other documentation from another entity that is satisfactory to the Board or the Board may cause an inspection to be conducted by its duly authorized agent and may charge an inspection fee in an amount sufficient to cover the costs of the inspection.

3. That it maintains its records of prescription drugs or dangerous drugs or devices dispensed to patients in the Commonwealth so that the records are readily retrievable from the records of other drugs dispensed and provides a copy or report of such dispensing records to the Board, its authorized agents, or any agent designated by the Superintendent of the Department of State Police upon request within seven days of receipt of a request.

4. That its pharmacists do not knowingly fill or dispense a prescription for a patient in Virginia in violation of § 54.1-3303.

B. Any pharmacy subject to this section shall, during its regular hours of operation, but not less than six days per week, and for a minimum of 40 hours per week, provide a toll-free telephone service to facilitate communication between patients in the Commonwealth and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number shall be disclosed on a label affixed to each container of drugs dispensed to patients in the Commonwealth.

C. Pharmacies subject to this section shall comply with the reporting requirements of the Prescription Monitoring Program as set forth in § 54.1-2521.

D. The registration fee shall be the fee specified for pharmacies within Virginia.

E. A nonresident pharmacy shall only deliver controlled substances that are dispensed pursuant to a prescription, directly to the consumer or his designated agent, or directly to a pharmacy located in Virginia pursuant to regulations of the Board.

F. *A nonresident pharmacy shall have a pharmacist in charge who is licensed by the Board to practice in Virginia, and who shall be responsible for the pharmacy's compliance with this chapter.*

G. *A nonresident pharmacy that dispenses more than 25 percent of its total prescription volume as a result of an original prescription order received or solicited by use of the Internet, including by electronic mail, shall receive and display in every medium in which it advertises a seal of approval from the National Association of Boards of Pharmacy certifying that it is a Verified Internet Pharmacy*

305 *Practice Site, or a seal certifying approval of a substantially similar program approved by the Board,*
306 *which shall be maintained and current.*

307 *H. A nonresident pharmacy shall certify the percentage of its annual business conducted via the*
308 *Internet and electronic mail and submit such supporting documentation as requested by the Board, in a*
309 *manner prescribed by the Board, along with its application for a permit or permit renewal.*

310 *I. The Board may, in its discretion, waive the requirements of this section for a nonresident*
311 *pharmacy that only does business within the Commonwealth in limited transactions.*