

VIRGINIA ACTS OF ASSEMBLY -- 2012 SESSION

CHAPTER 3

An Act to amend and reenact § 54.1-2900 of the Code of Virginia and to amend the Code of Virginia by adding in Article 4 of Chapter 29 of Title 54.1 sections numbered 54.1-2957.16 and 54.1-2957.17, relating to licensure of behavior analysts and assistant behavior analysts.

[H 1106]

Approved February 7, 2012

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-2900 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 4 of Chapter 29 of Title 54.1 sections numbered 54.1-2957.16 and 54.1-2957.17 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.).

"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 a chemical dependency treatment program.

"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.

"Medical malpractice judgment" means any final order of any court entering judgment against a licensee of the Board that arises out of any tort action or breach of contract action for personal injuries or wrongful death, based on health care or professional services rendered, or that should have been rendered, by a health care provider, to a patient.

"Medical malpractice settlement" means any written agreement and release entered into by or on behalf of a licensee of the Board in response to a written claim for money damages that arises out of any personal injuries or wrongful death, based on health care or professional services rendered, or that should have been rendered, by a health care provider, to a patient.

"Occupational therapy assistant" means an individual who has met the requirements of the Board for licensure and who works under the supervision of a licensed occupational therapist to assist in the practice of occupational therapy.

"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 in the context of a chemical dependency treatment program for patients eligible for federal, state or local public funds by an employee of the program who is trained and approved by the National Acupuncture Detoxification Association or an equivalent certifying body.

"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 behavior analysis" means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.

"Practice of chiropractic" means the adjustment of the 24 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 podiatry" means the prevention, diagnosis, treatment, and cure or alleviation of physical conditions, diseases, pain, or infirmities of the human foot and ankle, including the medical, mechanical and surgical treatment of the ailments of the human foot and ankle, but does not include amputation of the foot proximal to the transmetatarsal level through the metatarsal shafts. Amputations proximal to the metatarsal-phalangeal joints may only be performed in a hospital or ambulatory surgery facility accredited by an organization listed in § 54.1-2939. The practice includes the diagnosis and treatment of lower extremity ulcers; however, the treatment of severe lower extremity ulcers proximal to the foot and ankle may only be performed by appropriately trained, credentialed podiatrists in an approved hospital or ambulatory surgery center at which the podiatrist has privileges, as described in § 54.1-2939. The Board of Medicine shall determine whether a specific type of treatment of the foot and ankle is within the scope of practice of podiatry.

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

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

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

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

"Radiologic technologist, limited" means an individual, other than a licensed radiologic technologist, dental hygienist or person who is otherwise authorized by the Board of Dentistry under Chapter 27 (§ 54.1-2700 et seq.) of this title and the regulations pursuant thereto, who performs diagnostic radiographic procedures employing equipment which emits ionizing radiation which is limited to specific areas of the human body.

"Radiologist assistant" means an individual who has met the requirements of the Board for licensure as an advanced-level radiologic technologist and who, under the direct supervision of a licensed doctor of medicine or osteopathy specializing in the field of radiology, is authorized to (i) assess and evaluate the physiological and psychological responsiveness of patients undergoing radiologic procedures; (ii) evaluate image quality, make initial observations, and communicate observations to the supervising radiologist; (iii) administer contrast media or other medications prescribed by the supervising radiologist; and (iv) perform, or assist the supervising radiologist to perform, any other procedure consistent with the guidelines adopted by the American College of Radiology, the American Society of Radiologic

Technologists, and the American Registry of Radiologic Technologists.

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

§ 54.1-2957.16. *Licensure of behavior analysts and assistant behavior analysts; requirements; powers of the Board.*

A. *It shall be unlawful for any person to practice or to hold himself out as practicing as a behavior analyst or to use the title "Licensed Behavior Analyst" unless he holds a license as a behavior analyst issued by the Board. It shall be unlawful for any person to practice or to hold himself out as practicing as an assistant behavior analyst or to use the title "Licensed Assistant Behavior Analyst" unless he holds a license as an assistant behavior analyst issued by the Board. The Board shall issue licenses to practice as a behavior analyst or an assistant behavior analyst to applicants for licensure who meet the requirements of this chapter and the Board's regulations.*

B. *The Board shall establish criteria for licensure as a behavior analyst, which shall include, but not be limited to, the following:*

1. *Documentation that the applicant is currently certified as a Board Certified Behavior Analyst by the Behavior Analyst Certification Board or any other entity that is nationally accredited to certify practitioners of behavior analysis;*

2. *Documentation that the applicant conducts his professional practice in accordance with the Behavior Analyst Certification Board Guidelines for Responsible Conduct and Professional Ethical and Disciplinary Standards and any other accepted professional and ethical standards the Board deems necessary; and*

3. *Documentation that the applicant for licensure has not had his license or certification as a behavior analyst or as an assistant behavior analyst suspended or revoked and is not the subject of any disciplinary proceedings by the certifying board or in another jurisdiction.*

C. *The Board shall establish criteria for licensure as an assistant behavior analyst, which shall include, but not be limited to, the following:*

1. *Documentation that the applicant is currently certified as a Board Certified Assistant Behavior Analyst by the Behavior Analyst Certification Board or any other entity that is nationally accredited to certify practitioners of behavior analysis;*

2. *Documentation that the applicant conducts his professional practice in accordance with the Behavior Analyst Certification Board Guidelines for Responsible Conduct and Professional Ethical and Disciplinary Standards and any other accepted professional and ethical standards the Board deems necessary;*

3. *Documentation that the applicant for licensure has not had his license or certification as an assistant behavior analyst suspended or revoked and is not the subject of any disciplinary proceedings by the certifying board or in another jurisdiction; and*

4. *Documentation that the applicant's work is supervised by a licensed behavior analyst in accordance with the supervision requirements and procedures established by the Board.*

D. *The Board shall promulgate such regulations as may be necessary to implement the provisions of this chapter related to (i) application for and issuance of licenses to behavior analysts or assistant behavior analysts, (ii) requirements for licensure as a behavior analyst or an assistant behavior analyst, (iii) standards of practice for licensed behavior analysts or licensed assistant behavior analysts, (iv) requirements and procedures for the supervision of a licensed assistant behavior analyst by a licensed behavior analyst, and (v) requirements and procedures for supervision by licensed behavior analysts and licensed assistant behavior analysts of unlicensed individuals who assist in the provision of applied behavior analysis services.*

E. *The Board shall establish a fee, determined in accordance with methods used to establish fees for other health professionals licensed by the Board of Medicine, to be paid by all applicants for licensure as a behavior analyst or assistant behavior analyst.*

§ 54.1-2957.17. *Exceptions to licensure requirements; supervision of unlicensed individuals by licensed behavior analysts and licensed assistant behavior analysts.*

The provisions of § 54.1-2957.16 shall not be construed as prohibiting any professional licensed, certified, or registered by a health regulatory board from acting within the scope of his practice.

2. That an emergency exists and this act is in force from its passage.

3. That the Board of Medicine shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.

4. That the Board of Medicine shall convene a work group of not more than seven individuals, to include at least three board certified behavior analysts and at least one board certified assistant behavior analyst who have practiced for not less than three years, at least one consumer or family member of a consumer of behavior analysis services, and such other individuals as the Board may deem necessary or appropriate, to develop recommendations for the inclusion in regulations promulgated by the Board related to (i) criteria for licensure as a behavior analyst or assistant

behavior analyst, (ii) standards of professional conduct for behavior analysts or assistant behavior analysts, (iii) continued oversight of the practice of licensed behavior analysis and licensed assistant behavior analysis, and (iv) such other matters related to the licensure and practice of behavior analysts or assistant behavior analysts as the Board may deem necessary.