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**HOUSE BILL NO. 1106**

Offered January 11, 2012

Prefiled January 11, 2012

*A BILL 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 through 54.1-2957.19, relating to licensure of behavior analysts and assistant behavior analysts.*

Patrons—Greason, Albo, Anderson, BaCote, Bell, Richard P., Bell, Robert B., Brink, Bulova, Byron, Carr, Cline, Comstock, Cox, M.K., Crockett-Stark, Dance, Dudenhefer, Edmunds, Englin, Fariss, Filler-Corn, Habeeb, Helsel, Herring, Hodges, Hope, Howell, A.T., Howell, W.J., Hugo, Iaquinto, James, Johnson, Keam, Kilgore, Knight, Kory, Landes, LeMunyon, Lingamfelter, Lopez, Marshall, D.W., Marshall, R.G., Massie, McClellan, McQuinn, Merricks, Miller, Minchew, Morris, Morrissey, O'Bannon, Orrock, Plum, Poindexter, Putney, Ramadan, Ransone, Robinson, Rush, Rust, Scott, E.T., Scott, J.M., Sherwood, Sickles, Spruill, Stolle, Surovell, Torian, Toscano, Tyler, Villanueva, Ward, Ware, O., Ware, R.L., Watson, Watts and Yost

Referred to Committee on Health, Welfare and Institutions

**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 through 54.1-2957.19 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,

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52 power, endurance, speed, flexibility, range of motion or agility or a substantially similar injury or  
53 condition resulting from occupational activity immediately upon the onset of such injury or condition;  
54 and subsequent treatment and rehabilitation of such injuries or conditions under the direction of a  
55 licensed physical therapist and the patient's physician or under the direction of any doctor of medicine,  
56 osteopathy, chiropractic, podiatry, or dentistry, while using heat, light, sound, cold, electricity, exercise  
57 or mechanical or other devices.

58 *"Practice of behavior analysis" means the design, implementation, and evaluation of environmental*  
59 *modifications by a behavior analyst to produce socially significant improvements in human behavior. It*  
60 *includes the empirical identification of functional relations between behavior and environmental factors,*  
61 *known as functional assessment and analysis. Applied behavior analysis interventions are based on*  
62 *scientific research and the direct observation and measurement of behavior and environment. They*  
63 *utilize contextual factors, establishing operations, antecedent stimuli, positive reinforcement, and other*  
64 *procedures to help people develop new behaviors, increase or decrease existing behaviors, and emit*  
65 *behaviors under specific environmental conditions. The practice of behavior analysis expressly excludes*  
66 *psychological testing, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis,*  
67 *hypnotherapy, and long-term counseling as treatment modalities.*

68 "Practice of chiropractic" means the adjustment of the 24 movable vertebrae of the spinal column,  
69 and assisting nature for the purpose of normalizing the transmission of nerve energy, but does not  
70 include the use of surgery, obstetrics, osteopathy or the administration or prescribing of any drugs,  
71 medicines, serums or vaccines.

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

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

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

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

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

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

112 "Radiologic technologist" means an individual, other than a licensed doctor of medicine, osteopathy,  
113 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. Advisory Board on Behavior Analysis; membership; terms.

A. The Advisory Board on Behavior Analysis shall assist the Board in carrying out the provisions of this chapter regarding the qualifications, examination, and regulation of licensed behavior analysts and licensed assistant behavior analysts.

The Advisory Board shall consist of five members appointed by the Governor for four-year terms. Three members shall be at the time of appointment board certified behavior analysts who have practiced for not less than three years; one member shall be a board certified assistant behavior analyst who has practiced for not less than three years; and one member shall be a consumer or a family member of a consumer of behavior analysis services.

Vacancies occurring other than by expiration of term shall be filled for the unexpired term. No person shall be eligible to serve on the Advisory Board for more than two consecutive terms.

B. The Advisory Board shall, under the authority of the Board, recommend to the Board for its enactment into regulation the criteria for licensure as a behavior analyst or an assistant behavior analyst and the standards of professional conduct for holders of behavior analyst and assistant behavior analyst licenses.

The Advisory Board shall also assist in such other matters dealing with the practice of applied behavior analysis as the Board may in its discretion direct.

§ 54.1-2957.17. Advisory Board on Behavior Analysis; duties.

The Advisory Board shall, under the authority of the Board:

1. Recommend to the Board, for its promulgation into regulation, additional criteria for licensure as a behavior analyst or an assistant behavior analyst and the standards of professional conduct for holders of such licenses.

2. Assess the qualifications of applicants for licensure and recommend licensure when applicants meet the required criteria. The recommendations of the Advisory Board on licensure of applicants shall be presented to the Board, which shall then issue or deny licenses. Any applicant who is aggrieved by a denial of recommendation for licensure by the Advisory Board may appeal to the Board.

3. Receive investigative reports of professional misconduct and unlawful acts and recommend sanctions when appropriate. Any recommendation of sanctions shall be presented to the Board, which may then impose sanctions or take such other action as may be warranted by law.

4. Assist in such other matters dealing with the practice of applied behavior analysis as the Board may in its discretion direct.

§ 54.1-2957.18. Requirements for licensure as a behavior analyst or an assistant behavior analyst; provisional license.

A. The Board shall, in consultation with the Advisory Board on Behavior Analysis, promulgate regulations establishing requirements 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

175 *the Behavior Analyst Certification Board, or any other nationally accredited certification board;*

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

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

183 B. *The Board shall, in consultation with the Advisory Board on Behavior Analysis, promulgate*  
184 *regulations establishing requirements for licensure as an assistant behavior analyst which shall include,*  
185 *but not be limited to, the following:*

186 1. *Documentation that the applicant is currently certified as a Board Certified Assistant Behavior*  
187 *Analyst by the Behavior Analyst Certification Board or any other nationally accredited certification*  
188 *board;*

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

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

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

198 C. *The Board shall issue a provisional license to any Board Certified Behavior Analyst or Board*  
199 *Certified Assistant Behavior Analyst on or before December 31, 2012, who makes application for*  
200 *licensure prior to January 1, 2013. Such provisional license shall expire on June 30, 2014, and shall*  
201 *not be renewed. This subsection shall not be construed to limit the powers and authority of the Board.*

202 § 54.1-2957.19. *Unlawful practice and designation as a behavior analyst or assistant behavior*  
203 *analyst; exceptions.*

204 A. *It shall be unlawful for any person not holding a current and valid license from the Board to*  
205 *practice applied behavior analysis or to use the title "Licensed Behavior Analyst" or to claim to be a*  
206 *licensed behavior analyst.*

207 B. *It shall be unlawful for any person not holding a current and valid license from the Board to*  
208 *practice applied behavior analysis or to use the title "Licensed Assistant Behavior Analyst" or to claim*  
209 *to be a licensed assistant behavior analyst.*

210 C. *The provisions of this section shall not be construed as prohibiting the following:*

211 1. *An unlicensed person from providing applied behavior analysis services under the extended*  
212 *authority or direction of a licensed behavior analyst or a licensed assistant behavior analyst who is*  
213 *supervised by a licensed behavior analyst in accordance with the supervision requirements and*  
214 *procedures established by the certifying entity; or*

215 2. *Any professional licensed, certified, or registered by a health regulatory board from acting within*  
216 *the scope of his practice.*

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