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HOUSE BILL NO. 1688

Offered January 11, 2017

Prefiled January 6, 2017

A BILL to amend and reenact §§ 54.1-2900 and 54.1-2915 of the Code of Virginia, relating to practice of chiropractic; certain medical evaluations.

Patrons—Villanueva and Hugo

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

- 1. That §§ 54.1-2900 and 54.1-2915 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 an individual 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.

"Certified nurse midwife" means an advanced practice registered nurse who is certified in the specialty of nurse midwifery and who is jointly licensed by the Boards of Medicine and Nursing as a nurse practitioner pursuant to § 54.1-2957.

"Certified registered nurse anesthetist" means an advanced practice registered nurse who is certified in the specialty of nurse anesthesia, who is jointly licensed by the Boards of Medicine and Nursing as a nurse practitioner pursuant to § 54.1-2957, and who practices under the supervision of a doctor of medicine, osteopathy, podiatry, or dentistry but is not subject to the practice agreement requirement described in § 54.1-2957.

"Genetic counselor" means a person licensed by the Board to engage in the practice of genetic counseling.

"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.

"Nurse practitioner" means an advanced practice registered nurse who is jointly licensed by the Boards of Medicine and Nursing pursuant to § 54.1-2957.

"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.

"Patient care team" means a multidisciplinary team of health care providers actively functioning as a unit with the management and leadership of one or more patient care team physicians for the purpose of providing and delivering health care to a patient or group of patients.

"Patient care team physician" means a physician who is actively licensed to practice medicine in the Commonwealth, who regularly practices medicine in the Commonwealth, and who provides management and leadership in the care of patients as part of a patient care team.

"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

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59 does not include the use of physical therapy, chiropractic, or osteopathic manipulative techniques; the
60 use or prescribing of any drugs, medications, serums or vaccines; or the procedure of auricular
61 acupuncture as exempted in § 54.1-2901 when used in the context of a chemical dependency treatment
62 program for patients eligible for federal, state or local public funds by an employee of the program who
63 is trained and approved by the National Acupuncture Detoxification Association or an equivalent
64 certifying body.

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

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

76 "Practice of chiropractic" means the adjustment of the 24 movable vertebrae of the spinal column,
77 and assisting nature for the purpose of normalizing the transmission of nerve energy, but does not
78 include the use of surgery, obstetrics, osteopathy or the administration or prescribing of any drugs,
79 medicines, serums or vaccines. *"Practice of chiropractic" shall include performing the physical*
80 *examination of an applicant for a commercial driver's license or commercial learner's permit pursuant*
81 *to § 46.2-341.12 if the practitioner has (i) applied for and received certification as a medical examiner*
82 *pursuant to 49 C.F.R. Part 390, Subpart D and (ii) registered with the National Registry of Certified*
83 *Medical Examiners.*

84 "Practice of genetic counseling" means (i) obtaining and evaluating individual and family medical
85 histories to assess the risk of genetic medical conditions and diseases in a patient, his offspring, and
86 other family members; (ii) discussing the features, history, diagnosis, environmental factors, and risk
87 management of genetic medical conditions and diseases; (iii) ordering genetic laboratory tests and other
88 diagnostic studies necessary for genetic assessment; (iv) integrating the results with personal and family
89 medical history to assess and communicate risk factors for genetic medical conditions and diseases; (v)
90 evaluating the patient's and family's responses to the medical condition or risk of recurrence and
91 providing client-centered counseling and anticipatory guidance; (vi) identifying and utilizing community
92 resources that provide medical, educational, financial, and psychosocial support and advocacy; and (vii)
93 providing written documentation of medical, genetic, and counseling information for families and health
94 care professionals.

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

97 "Practice of occupational therapy" means the therapeutic use of occupations for habilitation and
98 rehabilitation to enhance physical health, mental health, and cognitive functioning and includes the
99 evaluation, analysis, assessment, and delivery of education and training in basic and instrumental
100 activities of daily living; the design, fabrication, and application of orthoses (splints); the design,
101 selection, and use of adaptive equipment and assistive technologies; therapeutic activities to enhance
102 functional performance; vocational evaluation and training; and consultation concerning the adaptation of
103 physical, sensory, and social environments.

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

115 "Practice of radiologic technology" means the application of ionizing radiation to human beings for
116 diagnostic or therapeutic purposes.

117 "Practice of respiratory care" means the (i) administration of pharmacological, diagnostic, and
118 therapeutic agents related to respiratory care procedures necessary to implement a treatment, disease
119 prevention, pulmonary rehabilitative, or diagnostic regimen prescribed by a practitioner of medicine or
120 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 therapist 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 therapist.

"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.), who (i) performs, may be called upon to perform, or is licensed to perform a comprehensive scope of diagnostic or therapeutic radiologic procedures employing 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, the administration of radioactive chemical compounds under the direction of an authorized user as specified by regulations of the Department of Health, or other procedures that 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.) and the regulations pursuant thereto, who performs diagnostic radiographic procedures employing equipment that emits ionizing radiation that 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.

§ 54.1-2915. Unprofessional conduct; grounds for refusal or disciplinary action.

A. The Board may refuse to issue a certificate or license to any applicant; reprimand any person; place any person on probation for such time as it may designate; impose a monetary penalty or terms as it may designate on any person; suspend any license for a stated period of time or indefinitely; or revoke any license for any of the following acts of unprofessional conduct:

1. False statements or representations or fraud or deceit in obtaining admission to the practice, or fraud or deceit in the practice of any branch of the healing arts;

2. Substance abuse rendering him unfit for the performance of his professional obligations and duties;

3. Intentional or negligent conduct in the practice of any branch of the healing arts that causes or is likely to cause injury to a patient or patients;

4. Mental or physical incapacity or incompetence to practice his profession with safety to his patients and the public;

5. Restriction of a license to practice a branch of the healing arts in another state, the District of Columbia, a United States possession or territory, or a foreign jurisdiction, or for an entity of the federal government;

6. Undertaking in any manner or by any means whatsoever to procure or perform or aid or abet in procuring or performing a criminal abortion;

7. Engaging in the practice of any of the healing arts under a false or assumed name, or

182 impersonating another practitioner of a like, similar, or different name;
183 8. Prescribing or dispensing any controlled substance with intent or knowledge that it will be used
184 otherwise than medicinally, or for accepted therapeutic purposes, or with intent to evade any law with
185 respect to the sale, use, or disposition of such drug;
186 9. Violating provisions of this chapter on division of fees or practicing any branch of the healing arts
187 in violation of the provisions of this chapter;
188 10. Knowingly and willfully committing an act that is a felony under the laws of the Commonwealth
189 or the United States, or any act that is a misdemeanor under such laws and involves moral turpitude;
190 11. Aiding or abetting, having professional connection with, or lending his name to any person
191 known to him to be practicing illegally any of the healing arts;
192 12. Conducting his practice in a manner contrary to the standards of ethics of his branch of the
193 healing arts;
194 13. Conducting his practice in such a manner as to be a danger to the health and welfare of his
195 patients or to the public;
196 14. Inability to practice with reasonable skill or safety because of illness or substance abuse;
197 15. Publishing in any manner an advertisement relating to his professional practice that contains a
198 claim of superiority or violates Board regulations governing advertising;
199 16. Performing any act likely to deceive, defraud, or harm the public;
200 17. Violating any provision of statute or regulation, state or federal, relating to the manufacture,
201 distribution, dispensing, or administration of drugs;
202 18. Violating or cooperating with others in violating any of the provisions of Chapters 1 (§ 54.1-100
203 et seq.), 24 (§ 54.1-2400 et seq.) and this chapter or regulations of the Board;
204 19. Engaging in sexual contact with a patient concurrent with and by virtue of the practitioner and
205 patient relationship or otherwise engaging at any time during the course of the practitioner and patient
206 relationship in conduct of a sexual nature that a reasonable patient would consider lewd and offensive;
207 20. Conviction in any state, territory, or country of any felony or of any crime involving moral
208 turpitude; or
209 21. Adjudication of legal incompetence or incapacity in any state if such adjudication is in effect and
210 the person has not been declared restored to competence or capacity; or
211 22. *Performing the services of a medical examiner as defined in 49 C.F.R. § 390.5 if, at the time*
212 *such services are performed, the person performing such services is not listed on the National Registry*
213 *of Certified Medical Examiners as provided in 49 C.F.R. § 390.109 or fails to meet the requirements*
214 *for continuing to be listed on the National Registry of Certified Medical Examiners as provided in 49*
215 *C.F.R. § 390.111.*
216 B. The commission or conviction of an offense in another state, territory, or country, which if
217 committed in Virginia would be a felony, shall be treated as a felony conviction or commission under
218 this section regardless of its designation in the other state, territory, or country.
219 C. The Board shall refuse to issue a certificate or license to any applicant if the candidate or
220 applicant has had his certificate or license to practice a branch of the healing arts revoked or suspended,
221 and has not had his certificate or license to so practice reinstated, in another state, the District of
222 Columbia, a United States possession or territory, or a foreign jurisdiction.