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HOUSE BILL NO. 1689

House Amendments in [] — February 1, 2017

A BILL to amend and reenact §§ 8.01-413, 32.1-127.1:03, and 54.1-111 of the Code of Virginia, relating to requests for medical records; fee limits; penalty for failure to provide.

Patron Prior to Engrossment—Delegate Habeeb

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-413, 32.1-127.1:03, and 54.1-111 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-413. Certain copies of health care provider's records or papers of patient admissible; right of patient, his attorney and authorized insurer to copies of such records or papers; subpoena; damages, costs and attorney fees.

A. In any case where the hospital, nursing facility, physician's, or other health care provider's original records or papers of any patient in a hospital or institution for the treatment of physical or mental illness are admissible or would be admissible as evidence, any typewritten copy, photograph, photostatted copy, or microphotograph or printout or other hard copy generated from computerized or other electronic storage, microfilm, or other photographic, mechanical, electronic, *imaging*, or chemical storage process thereof shall be admissible as evidence in any court of ~~this~~ the Commonwealth in like manner as the original, if the printout or hard copy or microphotograph or photograph is properly authenticated by the employees having authority to release or produce the original records *or papers*.

Any hospital, nursing facility, physician, or other health care provider whose records or papers relating to any such patient are subpoenaed for production as provided by law may comply with the subpoena by a timely mailing to the clerk issuing the subpoena or in whose court the action is pending properly authenticated copies, photographs or microphotographs in lieu of the originals. The court whose clerk issued the subpoena or, in the case of an attorney-issued subpoena, in which the action is pending, may, after notice to such hospital, nursing facility, physician, or other health care provider, enter an order requiring production of the originals, if available, of any stored records or papers whose copies, photographs or microphotographs are not sufficiently legible.

Except as provided in subsection G, the party requesting the subpoena duces tecum or on whose behalf an attorney-issued subpoena duces tecum was issued shall be liable for the reasonable charges of the hospital, nursing facility, physician, or other health care provider for the service of maintaining, retrieving, reviewing, preparing, copying, and mailing the items produced *pursuant to subsections B2, B3, B4, and B6, as applicable*. ~~Except for copies of X-ray photographs, however, such charges shall not exceed \$0.50 for each page up to 50 pages and \$0.25 a page thereafter for copies from paper or other hard copy generated from computerized or other electronic storage, or other photographic, mechanical, electronic, imaging or chemical storage process and \$1 per page for copies from microfilm or other micrographic process, plus all postage and shipping costs and a search and handling fee not to exceed \$10.~~

Upon request, a patient's account balance or itemized listing of charges maintained by a health care provider shall be supplied at no cost up to three times every twelve months to either the patient or the patient's attorney.

B. Copies of hospital, nursing facility, physician's, or other a health care provider's records or papers shall be furnished within 30 days of receipt of such request to the patient, his attorney, his executor or administrator, or an authorized insurer upon such patient's, attorney's, executor's, administrator's, or authorized insurer's written request, which request shall comply with the requirements of subsection E of § 32.1-127.1:03. *If a health care provider is unable to provide such records or papers within 30 days of receipt of such request, such provider shall notify the requester of such records or papers in writing of the reason for the delay and shall have no more than 30 days after the date of such written notice to comply with such request.*

However, copies of a patient's records *or papers* shall not be furnished to such patient when the patient's treating physician or clinical psychologist, in the exercise of professional judgment, has made a part of the patient's records *or papers* a written statement that in his opinion the furnishing to or review by the patient of such records *or papers* would be reasonably likely to endanger the life or physical safety of the patient or another person, or that such health records *or papers* make reference to a person, other than a health care provider, and the access requested would be reasonably likely to cause substantial harm to such referenced person. In any such case, if requested by the patient or his attorney

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59 or authorized insurer, such records *or papers* shall be furnished within ~~15~~ 30 days of the date of such
60 request to the patient's attorney or authorized insurer, rather than to the patient.

61 If the records *or papers* are not provided to the patient in accordance with this section, then, if
62 requested by the patient, the ~~hospital, nursing facility, physician, or other~~ health care provider denying
63 the request shall comply with the patient's request to either (i) provide a copy of the records *or papers*
64 to a physician or clinical psychologist of the patient's choice whose licensure, training, and experience,
65 relative to the patient's condition, are at least equivalent to that of the treating physician or clinical
66 psychologist upon whose opinion the denial is based, who shall, at the patient's expense, make a
67 judgment as to whether to make the records *or papers* available to the patient or (ii) designate a
68 physician or clinical psychologist, whose licensure, training, and experience, relative to the patient's
69 condition, are at least equivalent to that of the treating physician or clinical psychologist upon whose
70 opinion the denial is based and who did not participate in the original decision to deny the patient's
71 request for his records *or papers*, who shall, at the expense of the provider denying access to the
72 patient, review the records *or papers* and make a judgment as to whether to make the records *or papers*
73 available to the patient. In either such event, the ~~hospital, nursing facility, physician, or other~~ health care
74 provider denying the request shall comply with the judgment of the reviewing physician or clinical
75 psychologist.

76 Except as provided in subsection G, a reasonable charge may be made by the ~~hospital, nursing~~
77 ~~facility, physician or other~~ health care provider maintaining the records *or papers* for the cost of the
78 services relating to the maintenance, retrieval, review, and preparation of the copies of the records *or*
79 *papers, pursuant to subsections B2, B3, B4, and B6, as applicable. Except for copies of X-ray*
80 *photographs, however, such charges shall not exceed \$0.50 per page for up to 50 pages and \$0.25 a*
81 *page thereafter for copies from paper or other hard copy generated from computerized or other*
82 *electronic storage, or other photographic, mechanical, electronic, imaging or chemical storage process*
83 *and \$1 per page for copies from microfilm or other micrographic process, a fee for search and handling,*
84 *not to exceed \$10, and all postage and shipping costs. Any hospital, nursing facility, physician, or other*
85 *health care provider receiving such a request from a patient's attorney or authorized insurer shall require*
86 *a writing signed by the patient confirming the attorney's or authorized insurer's authority to make the*
87 *request, which shall comply with the requirements of subsection G of § 32.1-127.1:03, and shall accept a*
88 *photocopy, facsimile, or other copy of the original signed by the patient as if it were an original.*

89 *B1. A health care provider shall produce the records or papers in either paper, hard copy, or*
90 *electronic format, as requested by the requester. If the health care provider does not maintain the items*
91 *being requested in an electronic format and does not have the capability to produce such items in an*
92 *electronic format, such items shall be produced in paper or other hard copy format.*

93 *B2. When the records or papers requested pursuant to subsection B1 are produced in paper or hard*
94 *copy format from records maintained in (i) paper or other hard copy format or (ii) electronic storage, a*
95 *health care provider may charge the requester a reasonable fee not to exceed \$0.50 per page for up to*
96 *50 pages and \$0.25 per page thereafter for such copies, \$1 per page for hard copies from microfilm or*
97 *other micrographic process, and a fee for search and handling not to exceed \$20, plus all postage and*
98 *shipping costs.*

99 *B3. When the records or papers requested pursuant to subsection B1 are produced in electronic*
100 *format from records or papers maintained in electronic storage, a health care provider may charge the*
101 *requester a reasonable fee not to exceed \$0.37 per page for up to 50 pages and \$0.18 per page*
102 *thereafter for such copies and a fee for search and handling not to exceed \$20, plus all postage and*
103 *shipping costs. Except as provided in subsection B4, the total amount charged to the requester for*
104 *records or papers produced in electronic format pursuant to this subsection, including any postage and*
105 *shipping costs and any search and handling fee, shall not exceed \$150 for any request made on and*
106 *after July 1, 2017, but prior to July 1, 2021, or \$160 for any request made on or after July 1, 2021.*

107 *B4. When any portion of records or papers requested to be produced in electronic format is stored*
108 *in paper or other hard copy format at the time of the request and not otherwise maintained in electronic*
109 *storage, a health care provider may charge a fee pursuant to subsection B2 for the production of such*
110 *portion, and such production of such portion is not subject to any limitations set forth in subsection B3,*
111 *whether such portion is produced in paper or other hard copy format or converted to electronic format*
112 *as requested by the requester. Any other portion otherwise maintained in electronic storage shall be*
113 *produced electronically. The total search and handling fee shall not exceed \$20 for any production*
114 *made pursuant to this subsection where the production contains both records or papers in electronic*
115 *format and records or papers in paper or other hard copy format.*

116 *B5. Upon request, a patient's account balance or itemized listing of charges maintained by a health*
117 *care provider shall be supplied at no cost up to three times every ~~twelve~~ 12 months to either the patient*
118 *or the patient's attorney.*

119 *B6. When the record requested is an X-ray [series or study] or other imaging study and is*
120 *requested to be produced electronically, a health care provider may charge the requester a reasonable*

121 fee, which shall not exceed \$25 per X-ray [series or study] or other imaging study, and a fee for
 122 search and handling, which shall not exceed \$10, plus all postage and shipping costs. When an X-ray [
 123 series or study] or other imaging study is requested to be produced in hard copy format, or when a
 124 health care provider does not maintain such X-ray [series or study] or other imaging study being
 125 requested in an electronic format or does not have the capability to produce such X-ray [series or
 126 study] or other imaging study in an electronic format, a health care provider may charge the requester
 127 a reasonable fee, which may include a fee for search and handling not to exceed \$10 and the actual
 128 cost of supplies for and labor of copying the requested X-ray [series or study] or other imaging study,
 129 plus all postage and shipping costs.

130 B7. Upon request by the patient, or his attorney, of records or papers as to the cost to produce such
 131 records or papers, a health care provider shall inform the patient, or his attorney, of the most
 132 cost-effective method to produce such a request pursuant to subsection B2, B3, B4, or B6, as applicable.

133 B8. Production of records or papers to the patient, or his attorney, requested pursuant to this section
 134 shall not be withheld or delayed solely on the grounds of nonpayment for such records or papers.

135 C. Upon the failure of any ~~hospital, nursing facility, physician, or other~~ health care provider to
 136 comply with any written request made in accordance with subsection B within the period of time
 137 specified in that subsection and within the manner specified in subsections E and F of § 32.1-127.1:03,
 138 the patient, his attorney, his executor or administrator, or authorized insurer may cause a subpoena duces
 139 tecum to be issued. The subpoena may be issued (i) upon filing a request therefor with the clerk of the
 140 circuit court wherein any eventual suit would be required to be filed, and upon payment of the fees
 141 required by subdivision A 18 of § 17.1-275, and fees for service or (ii) by the patient's attorney in a
 142 pending civil case in accordance with § 8.01-407 without payment of the fees established in subdivision
 143 A 23 of § 17.1-275.

144 A sheriff shall not be required to serve an attorney-issued subpoena that is not issued at least five
 145 business days prior to the date production of the record is desired.

146 No subpoena duces tecum for records or papers shall set a return date by which the health care
 147 provider must comply with such subpoena earlier than 15 days from the date of the subpoena, except by
 148 order of a court or administrative agency for good cause shown. When a court or administrative agency
 149 orders that records or papers be disclosed pursuant to a subpoena duces tecum earlier than 15 days
 150 from the date of the subpoena, a copy of such order shall accompany such subpoena.

151 As to a subpoena duces tecum issued with at least a 15-day return date, if no motion to quash is
 152 filed within 15 days of the issuance of the subpoena, the party requesting the subpoena duces tecum or
 153 the party on whose behalf the subpoena was issued shall certify to the subpoenaed health care provider
 154 that (a) the time for filing a motion to quash has elapsed and (b) no such motion was filed. Upon
 155 receipt of such certification, the subpoenaed health care provider shall comply with the subpoena duces
 156 tecum by returning the specified records or papers by either (1) the return date on the subpoena or (2)
 157 five days after receipt of such certification, whichever is later.

158 The subpoena shall be returnable within 20 days of proper service, directing ~~direct~~ the hospital,
 159 ~~nursing facility, physician, or other~~ health care provider to produce and furnish copies of the reports and
 160 records or papers to the requester or clerk, who shall then make the same available to the patient, his
 161 attorney, or his authorized insurer.

162 If the court finds that a ~~hospital, nursing facility, physician, or other~~ health care provider willfully
 163 refused to comply with a written request made in accordance with subsection B, either (A) by ~~willfully~~
 164 ~~or arbitrarily refusing~~ failing over the previous six-month period to respond to a second or subsequent
 165 written request, properly submitted to the health care provider in writing with complete required
 166 information, without good cause or (B) by imposing a charge in excess of the reasonable expense of
 167 making the copies and processing the request for records or papers, the court may award damages for
 168 all expenses incurred by the patient or authorized insurer to obtain such copies, including a refund of
 169 fees if payment has been made for such copies, court costs, and reasonable ~~attorney's~~ attorney fees.

170 If the court further finds that such subpoenaed records or papers, subpoenaed pursuant to this
 171 subsection, or requested records or papers, requested pursuant to subsection B, are not produced for a
 172 reason other than compliance with § 32.1-127.1:03 or an inability to retrieve or access such records or
 173 papers, as communicated in writing to the subpoenaing party or requester within the time period
 174 required by subsection B, such subpoenaing party or requester shall be entitled to a rebuttable
 175 presumption that expenses and attorney fees related to the failure to produce such records or papers
 176 shall be awarded by the court.

177 D. The provisions of ~~subsections A, B, and C~~ hereof this section shall apply to any health care
 178 provider whose office is located within or ~~without~~ outside the Commonwealth if the records pertain to
 179 any patient who is a party to a cause of action in any court in the Commonwealth of Virginia, and shall
 180 apply only to requests made by the patient, his attorney, his executor or administrator, or any authorized
 181 insurer, in anticipation of litigation or in the course of litigation.

182 E. ~~Health care provider~~, as ~~As~~ used in this section, ~~shall have~~ "health care provider" has the same
183 meaning as provided in § 32.1-127.1:03 and ~~shall also include~~ *includes* an independent medical copy
184 retrieval service contracted to provide the service of retrieving, reviewing, and preparing such copies for
185 distribution.

186 F. Notwithstanding the authorization to admit as evidence patient records in the form of
187 microphotographs, prescription dispensing records maintained in or on behalf of any pharmacy registered
188 or permitted in ~~Virginia~~ *the Commonwealth* shall only be stored in compliance with §§ 54.1-3410,
189 54.1-3411 and 54.1-3412.

190 G. The provisions of this section governing fees that may be charged by a health care provider
191 whose records are subpoenaed or requested pursuant to this section shall not apply in the case of any
192 request by a patient for *a copy of his own records*, which shall be governed by subsection J of
193 § 32.1-127.1:03. This subsection shall not be construed to affect other provisions of state or federal
194 statute, regulation or any case decision relating to charges by health care providers for copies of records
195 requested by any person other than a patient when requesting his own records pursuant to subsection J
196 of § 32.1-127.1:03.

197 **§ 32.1-127.1:03. Health records privacy.**

198 A. There is hereby recognized an individual's right of privacy in the content of his health records.
199 Health records are the property of the health care entity maintaining them, and, except when permitted
200 or required by this section or by other provisions of state law, no health care entity, or other person
201 working in a health care setting, may disclose an individual's health records.

202 Pursuant to this subsection:

203 1. Health care entities shall disclose health records to the individual who is the subject of the health
204 record, except as provided in subsections E and F and subsection B of § 8.01-413.

205 2. Health records shall not be removed from the premises where they are maintained without the
206 approval of the health care entity that maintains such health records, except in accordance with a court
207 order or subpoena consistent with subsection C of § 8.01-413 or with this section or in accordance with
208 the regulations relating to change of ownership of health records promulgated by a health regulatory
209 board established in Title 54.1.

210 3. No person to whom health records are disclosed shall redisclose or otherwise reveal the health
211 records of an individual, beyond the purpose for which such disclosure was made, without first
212 obtaining the individual's specific authorization to such redisclosure. This redisclosure prohibition shall
213 not, however, prevent (i) any health care entity that receives health records from another health care
214 entity from making subsequent disclosures as permitted under this section and the federal Department of
215 Health and Human Services regulations relating to privacy of the electronic transmission of data and
216 protected health information promulgated by the United States Department of Health and Human
217 Services as required by the Health Insurance Portability and Accountability Act (HIPAA)(42 U.S.C.
218 § 1320d et seq.) or (ii) any health care entity from furnishing health records and aggregate or other data,
219 from which individually identifying prescription information has been removed, encoded or encrypted, to
220 qualified researchers, including, but not limited to, pharmaceutical manufacturers and their agents or
221 contractors, for purposes of clinical, pharmaco-epidemiological, pharmaco-economic, or other health
222 services research.

223 4. Health care entities shall, upon the request of the individual who is the subject of the health
224 record, disclose health records to other health care entities, in any available format of the ~~requestor's~~
225 *requester's* choosing, as provided in subsection E.

226 B. As used in this section:

227 "Agent" means a person who has been appointed as an individual's agent under a power of attorney
228 for health care or an advance directive under the Health Care Decisions Act (§ 54.1-2981 et seq.).

229 "Certification" means a written representation that is delivered by hand, by first-class mail, by
230 overnight delivery service, or by facsimile if the sender obtains a facsimile-machine-generated
231 confirmation reflecting that all facsimile pages were successfully transmitted.

232 "Guardian" means a court-appointed guardian of the person.

233 "Health care clearinghouse" means, consistent with the definition set out in 45 C.F.R. § 160.103, a
234 public or private entity, such as a billing service, repricing company, community health management
235 information system or community health information system, and "value-added" networks and switches,
236 that performs either of the following functions: (i) processes or facilitates the processing of health
237 information received from another entity in a nonstandard format or containing nonstandard data content
238 into standard data elements or a standard transaction; or (ii) receives a standard transaction from another
239 entity and processes or facilitates the processing of health information into nonstandard format or
240 nonstandard data content for the receiving entity.

241 "Health care entity" means any health care provider, health plan or health care clearinghouse.

242 "Health care provider" means those entities listed in the definition of "health care provider" in
243 § 8.01-581.1, except that state-operated facilities shall also be considered health care providers for the

244 purposes of this section. Health care provider shall also include all persons who are licensed, certified,
 245 registered or permitted or who hold a multistate licensure privilege issued by any of the health
 246 regulatory boards within the Department of Health Professions, except persons regulated by the Board of
 247 Funeral Directors and Embalmers or the Board of Veterinary Medicine.

248 "Health plan" means an individual or group plan that provides, or pays the cost of, medical care.
 249 "Health plan" ~~shall include~~ *includes* any entity included in such definition as set out in 45 C.F.R.
 250 § 160.103.

251 "Health record" means any written, printed or electronically recorded material maintained by a health
 252 care entity in the course of providing health services to an individual concerning the individual and the
 253 services provided. "Health record" also includes the substance of any communication made by an
 254 individual to a health care entity in confidence during or in connection with the provision of health
 255 services or information otherwise acquired by the health care entity about an individual in confidence
 256 and in connection with the provision of health services to the individual.

257 "Health services" means, but shall not be limited to, examination, diagnosis, evaluation, treatment,
 258 pharmaceuticals, aftercare, habilitation or rehabilitation and mental health therapy of any kind, as well as
 259 payment or reimbursement for any such services.

260 "Individual" means a patient who is receiving or has received health services from a health care
 261 entity.

262 "Individually identifying prescription information" means all prescriptions, drug orders or any other
 263 prescription information that specifically identifies an individual.

264 "Parent" means a biological, adoptive or foster parent.

265 "Psychotherapy notes" means comments, recorded in any medium by a health care provider who is a
 266 mental health professional, documenting or analyzing the contents of conversation during a private
 267 counseling session with an individual or a group, joint, or family counseling session that are separated
 268 from the rest of the individual's health record. "Psychotherapy notes" ~~shall~~ *does* not include annotations
 269 relating to medication and prescription monitoring, counseling session start and stop times, treatment
 270 modalities and frequencies, clinical test results, or any summary of any symptoms, diagnosis, prognosis,
 271 functional status, treatment plan, or the individual's progress to date.

272 C. The provisions of this section shall not apply to any of the following:

273 1. The status of and release of information governed by §§ 65.2-604 and 65.2-607 of the Virginia
 274 Workers' Compensation Act;

275 2. Except where specifically provided herein, the health records of minors; or

276 3. The release of juvenile health records to a secure facility or a shelter care facility pursuant to
 277 § 16.1-248.3.

278 D. Health care entities may, and, when required by other provisions of state law, shall, disclose
 279 health records:

280 1. As set forth in subsection E, pursuant to the written authorization of (i) the individual or (ii) in the
 281 case of a minor, (a) his custodial parent, guardian or other person authorized to consent to treatment of
 282 minors pursuant to § 54.1-2969 or (b) the minor himself, if he has consented to his own treatment
 283 pursuant to § 54.1-2969, or (iii) in emergency cases or situations where it is impractical to obtain an
 284 individual's written authorization, pursuant to the individual's oral authorization for a health care
 285 provider or health plan to discuss the individual's health records with a third party specified by the
 286 individual;

287 2. In compliance with a subpoena issued in accord with subsection H, pursuant to a search warrant
 288 or a grand jury subpoena, pursuant to court order upon good cause shown or in compliance with a
 289 subpoena issued pursuant to subsection C of § 8.01-413. Regardless of the manner by which health
 290 records relating to an individual are compelled to be disclosed pursuant to this subdivision, nothing in
 291 this subdivision shall be construed to prohibit any staff or employee of a health care entity from
 292 providing information about such individual to a law-enforcement officer in connection with such
 293 subpoena, search warrant, or court order;

294 3. In accord with subsection F of § 8.01-399 including, but not limited to, situations where disclosure
 295 is reasonably necessary to establish or collect a fee or to defend a health care entity or the health care
 296 entity's employees or staff against any accusation of wrongful conduct; also as required in the course of
 297 an investigation, audit, review or proceedings regarding a health care entity's conduct by a duly
 298 authorized law-enforcement, licensure, accreditation, or professional review entity;

299 4. In testimony in accordance with §§ 8.01-399 and 8.01-400.2;

300 5. In compliance with the provisions of § 8.01-413;

301 6. As required or authorized by law relating to public health activities, health oversight activities,
 302 serious threats to health or safety, or abuse, neglect or domestic violence, relating to contagious disease,
 303 public safety, and suspected child or adult abuse reporting requirements, including, but not limited to,
 304 those contained in §§ 32.1-36, 32.1-36.1, 32.1-40, 32.1-41, 32.1-127.1:04, 32.1-276.5, 32.1-283,

- 305 32.1-283.1, 32.1-320, 37.2-710, 37.2-839, 53.1-40.10, 54.1-2400.6, 54.1-2400.7, 54.1-2403.3, 54.1-2506,
306 54.1-2966, 54.1-2966.1, 54.1-2967, 54.1-2968, 54.1-3408.2, 63.2-1509, and 63.2-1606;
- 307 7. Where necessary in connection with the care of the individual;
- 308 8. In connection with the health care entity's own health care operations or the health care operations
309 of another health care entity, as specified in 45 C.F.R. § 164.501, or in the normal course of business in
310 accordance with accepted standards of practice within the health services setting; however, the
311 maintenance, storage, and disclosure of the mass of prescription dispensing records maintained in a
312 pharmacy registered or permitted in Virginia shall only be accomplished in compliance with
313 §§ 54.1-3410, 54.1-3411, and 54.1-3412;
- 314 9. When the individual has waived his right to the privacy of the health records;
- 315 10. When examination and evaluation of an individual are undertaken pursuant to judicial or
316 administrative law order, but only to the extent as required by such order;
- 317 11. To the guardian ad litem and any attorney representing the respondent in the course of a
318 guardianship proceeding of an adult patient who is the respondent in a proceeding under Chapter 20
319 (§ 64.2-2000 et seq.) of Title 64.2;
- 320 12. To the guardian ad litem and any attorney appointed by the court to represent an individual who
321 is or has been a patient who is the subject of a commitment proceeding under § 19.2-169.6, Article 5
322 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title
323 16.1, or a judicial authorization for treatment proceeding pursuant to Chapter 11 (§ 37.2-1100 et seq.) of
324 Title 37.2;
- 325 13. To a magistrate, the court, the evaluator or examiner required under Article 16 (§ 16.1-335 et
326 seq.) of Chapter 11 of Title 16.1 or § 37.2-815, a community services board or behavioral health
327 authority or a designee of a community services board or behavioral health authority, or a
328 law-enforcement officer participating in any proceeding under Article 16 (§ 16.1-335 et seq.) of Chapter
329 11 of Title 16.1, § 19.2-169.6, or Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 regarding the subject of
330 the proceeding, and to any health care provider evaluating or providing services to the person who is the
331 subject of the proceeding or monitoring the person's adherence to a treatment plan ordered under those
332 provisions. Health records disclosed to a law-enforcement officer shall be limited to information
333 necessary to protect the officer, the person, or the public from physical injury or to address the health
334 care needs of the person. Information disclosed to a law-enforcement officer shall not be used for any
335 other purpose, disclosed to others, or retained;
- 336 14. To the attorney and/or guardian ad litem of a minor who represents such minor in any judicial or
337 administrative proceeding, if the court or administrative hearing officer has entered an order granting the
338 attorney or guardian ad litem this right and such attorney or guardian ad litem presents evidence to the
339 health care entity of such order;
- 340 15. With regard to the Court-Appointed Special Advocate (CASA) program, a minor's health records
341 in accord with § 9.1-156;
- 342 16. To an agent appointed under an individual's power of attorney or to an agent or decision maker
343 designated in an individual's advance directive for health care or for decisions on anatomical gifts and
344 organ, tissue or eye donation or to any other person consistent with the provisions of the Health Care
345 Decisions Act (§ 54.1-2981 et seq.);
- 346 17. To third-party payors and their agents for purposes of reimbursement;
- 347 18. As is necessary to support an application for receipt of health care benefits from a governmental
348 agency or as required by an authorized governmental agency reviewing such application or reviewing
349 benefits already provided or as necessary to the coordination of prevention and control of disease,
350 injury, or disability and delivery of such health care benefits pursuant to § 32.1-127.1:04;
- 351 19. Upon the sale of a medical practice as provided in § 54.1-2405; or upon a change of ownership
352 or closing of a pharmacy pursuant to regulations of the Board of Pharmacy;
- 353 20. In accord with subsection B of § 54.1-2400.1, to communicate an individual's specific and
354 immediate threat to cause serious bodily injury or death of an identified or readily identifiable person;
- 355 21. Where necessary in connection with the implementation of a hospital's routine contact process for
356 organ donation pursuant to subdivision B 4 of § 32.1-127;
- 357 22. In the case of substance abuse records, when permitted by and in conformity with requirements
358 of federal law found in 42 U.S.C. § 290dd-2 and 42 C.F.R. Part 2;
- 359 23. In connection with the work of any entity established as set forth in § 8.01-581.16 to evaluate the
360 adequacy or quality of professional services or the competency and qualifications for professional staff
361 privileges;
- 362 24. If the health records are those of a deceased or mentally incapacitated individual to the personal
363 representative or executor of the deceased individual or the legal guardian or committee of the
364 incompetent or incapacitated individual or if there is no personal representative, executor, legal guardian
365 or committee appointed, to the following persons in the following order of priority: a spouse, an adult
366 son or daughter, either parent, an adult brother or sister, or any other relative of the deceased individual

367 in order of blood relationship;

368 25. For the purpose of conducting record reviews of inpatient hospital deaths to promote
 369 identification of all potential organ, eye, and tissue donors in conformance with the requirements of
 370 applicable federal law and regulations, including 42 C.F.R. § 482.45, (i) to the health care provider's
 371 designated organ procurement organization certified by the United States Health Care Financing
 372 Administration and (ii) to any eye bank or tissue bank in Virginia certified by the Eye Bank Association
 373 of America or the American Association of Tissue Banks;

374 26. To the Office of the State Inspector General pursuant to Chapter 3.2 (§ 2.2-307 et seq.) of Title
 375 2.2;

376 27. To an entity participating in the activities of a local health partnership authority established
 377 pursuant to Article 6.1 (§ 32.1-122.10:001 et seq.) of Chapter 4, pursuant to subdivision 1;

378 28. To law-enforcement officials by each licensed emergency medical services agency, (i) when the
 379 individual is the victim of a crime or (ii) when the individual has been arrested and has received
 380 emergency medical services or has refused emergency medical services and the health records consist of
 381 the prehospital patient care report required by § 32.1-116.1;

382 29. To law-enforcement officials, in response to their request, for the purpose of identifying or
 383 locating a suspect, fugitive, person required to register pursuant to § 9.1-901 of the Sex Offender and
 384 Crimes Against Minors Registry Act, material witness, or missing person, provided that only the
 385 following information may be disclosed: (i) name and address of the person, (ii) date and place of birth
 386 of the person, (iii) social security number of the person, (iv) blood type of the person, (v) date and time
 387 of treatment received by the person, (vi) date and time of death of the person, where applicable, (vii)
 388 description of distinguishing physical characteristics of the person, and (viii) type of injury sustained by
 389 the person;

390 30. To law-enforcement officials regarding the death of an individual for the purpose of alerting law
 391 enforcement of the death if the health care entity has a suspicion that such death may have resulted
 392 from criminal conduct;

393 31. To law-enforcement officials if the health care entity believes in good faith that the information
 394 disclosed constitutes evidence of a crime that occurred on its premises;

395 32. To the State Health Commissioner pursuant to § 32.1-48.015 when such records are those of a
 396 person or persons who are subject to an order of quarantine or an order of isolation pursuant to Article
 397 3.02 (§ 32.1-48.05 et seq.) of Chapter 2;

398 33. To the Commissioner of the Department of Labor and Industry or his designee by each licensed
 399 emergency medical services agency when the records consist of the prehospital patient care report
 400 required by § 32.1-116.1 and the patient has suffered an injury or death on a work site while performing
 401 duties or tasks that are within the scope of his employment;

402 34. To notify a family member or personal representative of an individual who is the subject of a
 403 proceeding pursuant to Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1 or Chapter 8
 404 (§ 37.2-800 et seq.) of Title 37.2 of information that is directly relevant to such person's involvement
 405 with the individual's health care, which may include the individual's location and general condition,
 406 when the individual has the capacity to make health care decisions and (i) the individual has agreed to
 407 the notification, (ii) the individual has been provided an opportunity to object to the notification and
 408 does not express an objection, or (iii) the health care provider can, on the basis of his professional
 409 judgment, reasonably infer from the circumstances that the individual does not object to the notification.
 410 If the opportunity to agree or object to the notification cannot practicably be provided because of the
 411 individual's incapacity or an emergency circumstance, the health care provider may notify a family
 412 member or personal representative of the individual of information that is directly relevant to such
 413 person's involvement with the individual's health care, which may include the individual's location and
 414 general condition if the health care provider, in the exercise of his professional judgment, determines
 415 that the notification is in the best interests of the individual. Such notification shall not be made if the
 416 provider has actual knowledge the family member or personal representative is currently prohibited by
 417 court order from contacting the individual;

418 35. To a threat assessment team established by a local school board pursuant to § 22.1-79.4, by a
 419 public institution of higher education pursuant to § 23-9.2:10, or by a private nonprofit institution of
 420 higher education; and

421 35. To a threat assessment team established by a local school board pursuant to § 22.1-79.4, by a
 422 public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution of
 423 higher education; and

424 36. To a regional emergency medical services council pursuant to § 32.1-116.1, for purposes limited
 425 to monitoring and improving the quality of emergency medical services pursuant to § 32.1-111.3.

426 Notwithstanding the provisions of subdivisions 1 through 35, a health care entity shall obtain an
 427 individual's written authorization for any disclosure of psychotherapy notes, except when disclosure by

428 the health care entity is (i) for its own training programs in which students, trainees, or practitioners in
429 mental health are being taught under supervision to practice or to improve their skills in group, joint,
430 family, or individual counseling; (ii) to defend itself or its employees or staff against any accusation of
431 wrongful conduct; (iii) in the discharge of the duty, in accordance with subsection B of § 54.1-2400.1,
432 to take precautions to protect third parties from violent behavior or other serious harm; (iv) required in
433 the course of an investigation, audit, review, or proceeding regarding a health care entity's conduct by a
434 duly authorized law-enforcement, licensure, accreditation, or professional review entity; or (v) otherwise
435 required by law.

436 E. Health care records required to be disclosed pursuant to this section shall be made available
437 electronically only to the extent and in the manner authorized by the federal Health Information
438 Technology for Economic and Clinical Health Act (P.L. 111-5) and implementing regulations and the
439 Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.) and implementing
440 regulations. Notwithstanding any other provision to the contrary, a health care entity shall not be
441 required to provide records in an electronic format requested if (i) the electronic format is not
442 reasonably available without additional cost to the health care entity, (ii) the records would be subject to
443 modification in the format requested, or (iii) the health care entity determines that the integrity of the
444 records could be compromised in the electronic format requested. Requests for copies of or electronic
445 access to health records shall (a) be in writing, dated and signed by the requester; (b) identify the nature
446 of the information requested; and (c) include evidence of the authority of the requester to receive such
447 copies or access such records, and identification of the person to whom the information is to be
448 disclosed; and (d) specify whether the requester would like the records in electronic format, if available,
449 or in paper format. The health care entity shall accept a photocopy, facsimile, or other copy of the
450 original signed by the ~~requester~~ requester as if it were an original. Within ~~15~~ 30 days of receipt of a
451 request for copies of or electronic access to health records, the health care entity shall do one of the
452 following: ~~(A)~~ (1) furnish such copies of or allow electronic access to the requested health records to
453 any requester authorized to receive them in electronic format if so requested; ~~(B)~~ (2) inform the
454 requester if the information does not exist or cannot be found; ~~(C)~~ (3) if the health care entity does not
455 maintain a record of the information, so inform the requester and provide the name and address, if
456 known, of the health care entity who maintains the record; or ~~(D)~~ (4) deny the request ~~(H)~~ (A) under
457 subsection F, ~~(2)~~ (B) on the grounds that the requester has not established his authority to receive such
458 health records or proof of his identity, or ~~(3)~~ (C) as other provided by law. Procedures set forth in this
459 section shall apply only to requests for health records not specifically governed by other provisions of
460 state law.

461 F. Except as provided in subsection B of § 8.01-413, copies of or electronic access to an individual's
462 health records shall not be furnished to such individual or anyone authorized to act on the individual's
463 behalf when the individual's treating physician or the individual's treating clinical psychologist has made
464 a part of the individual's record a written statement that, in the exercise of his professional judgment, the
465 furnishing to or review by the individual of such health records would be reasonably likely to endanger
466 the life or physical safety of the individual or another person, or that such health record makes reference
467 to a person other than a health care provider and the access requested would be reasonably likely to
468 cause substantial harm to such referenced person. If any health care entity denies a request for copies of
469 or electronic access to health records based on such statement, the health care entity shall inform the
470 individual of the individual's right to designate, in writing, at his own expense, another reviewing
471 physician or clinical psychologist, whose licensure, training and experience relative to the individual's
472 condition are at least equivalent to that of the physician or clinical psychologist upon whose opinion the
473 denial is based. The designated reviewing physician or clinical psychologist shall make a judgment as to
474 whether to make the health record available to the individual.

475 The health care entity denying the request shall also inform the individual of the individual's right to
476 request in writing that such health care entity designate, at its own expense, a physician or clinical
477 psychologist, whose licensure, training, and experience relative to the individual's condition are at least
478 equivalent to that of the physician or clinical psychologist upon whose professional judgment the denial
479 is based and who did not participate in the original decision to deny the health records, who shall make
480 a judgment as to whether to make the health record available to the individual. The health care entity
481 shall comply with the judgment of the reviewing physician or clinical psychologist. The health care
482 entity shall permit copying and examination of the health record by such other physician or clinical
483 psychologist designated by either the individual at his own expense or by the health care entity at its
484 expense.

485 Any health record copied for review by any such designated physician or clinical psychologist shall
486 be accompanied by a statement from the custodian of the health record that the individual's treating
487 physician or clinical psychologist determined that the individual's review of his health record would be
488 reasonably likely to endanger the life or physical safety of the individual or would be reasonably likely
489 to cause substantial harm to a person referenced in the health record who is not a health care provider.

490 Further, nothing herein shall be construed as giving, or interpreted to bestow the right to receive
491 copies of, or otherwise obtain access to, psychotherapy notes to any individual or any person authorized
492 to act on his behalf.

493 G. A written authorization to allow release of an individual's health records shall substantially include
494 the following information:

495 AUTHORIZATION TO RELEASE CONFIDENTIAL HEALTH RECORDS

496 Individual's Name _____

497 Health Care Entity's Name _____

498 Person, Agency, or Health Care Entity to whom disclosure is to be made

499 _____
500 Information or Health Records to be disclosed

501 _____
502 Purpose of Disclosure or at the Request of the Individual

503 _____
504 As the person signing this authorization, I understand that I am giving my permission to the
505 above-named health care entity for disclosure of confidential health records. I understand that the health
506 care entity may not condition treatment or payment on my willingness to sign this authorization unless
507 the specific circumstances under which such conditioning is permitted by law are applicable and are set
508 forth in this authorization. I also understand that I have the right to revoke this authorization at any
509 time, but that my revocation is not effective until delivered in writing to the person who is in possession
510 of my health records and is not effective as to health records already disclosed under this authorization.
511 A copy of this authorization and a notation concerning the persons or agencies to whom disclosure was
512 made shall be included with my original health records. I understand that health information disclosed
513 under this authorization might be redisclosed by a recipient and may, as a result of such disclosure, no
514 longer be protected to the same extent as such health information was protected by law while solely in
515 the possession of the health care entity.

516 This authorization expires on (date) or (event) _____

517 Signature of Individual or Individual's Legal Representative if Individual is Unable to Sign

518 _____
519 Relationship or Authority of Legal Representative

520 _____
521 Date of Signature _____

522 H. Pursuant to this subsection:

523 1. Unless excepted from these provisions in subdivision 9, no party to a civil, criminal or
524 administrative action or proceeding shall request the issuance of a subpoena duces tecum for another
525 party's health records or cause a subpoena duces tecum to be issued by an attorney unless a copy of the
526 request for the subpoena or a copy of the attorney-issued subpoena is provided to the other party's
527 counsel or to the other party if pro se, simultaneously with filing the request or issuance of the
528 subpoena. No party to an action or proceeding shall request or cause the issuance of a subpoena duces
529 tecum for the health records of a nonparty witness unless a copy of the request for the subpoena or a
530 copy of the attorney-issued subpoena is provided to the nonparty witness simultaneously with filing the
531 request or issuance of the attorney-issued subpoena.

532 No subpoena duces tecum for health records shall set a return date earlier than 15 days from the date
533 of the subpoena except by order of a court or administrative agency for good cause shown. When a
534 court or administrative agency directs that health records be disclosed pursuant to a subpoena duces
535 tecum earlier than 15 days from the date of the subpoena, a copy of the order shall accompany the
536 subpoena.

537 Any party requesting a subpoena duces tecum for health records or on whose behalf the subpoena
538 duces tecum is being issued shall have the duty to determine whether the individual whose health
539 records are being sought is pro se or a nonparty.

540 In instances where health records being subpoenaed are those of a pro se party or nonparty witness,
541 the party requesting or issuing the subpoena shall deliver to the pro se party or nonparty witness
542 together with the copy of the request for subpoena, or a copy of the subpoena in the case of an
543 attorney-issued subpoena, a statement informing them of their rights and remedies. The statement shall
544 include the following language and the heading shall be in boldface capital letters:

545 NOTICE TO INDIVIDUAL

546 The attached document means that (insert name of party requesting or causing issuance of the
547 subpoena) has either asked the court or administrative agency to issue a subpoena or a subpoena has
548 been issued by the other party's attorney to your doctor, other health care providers (names of health
549 care providers inserted here) or other health care entity (name of health care entity to be inserted here)
550 requiring them to produce your health records. Your doctor, other health care provider or other health

551 care entity is required to respond by providing a copy of your health records. If you believe your health
552 records should not be disclosed and object to their disclosure, you have the right to file a motion with
553 the clerk of the court or the administrative agency to quash the subpoena. If you elect to file a motion
554 to quash, such motion must be filed within 15 days of the date of the request or of the attorney-issued
555 subpoena. You may contact the clerk's office or the administrative agency to determine the requirements
556 that must be satisfied when filing a motion to quash and you may elect to contact an attorney to
557 represent your interest. If you elect to file a motion to quash, you must notify your doctor, other health
558 care provider(s), or other health care entity, that you are filing the motion so that the health care
559 provider or health care entity knows to send the health records to the clerk of court or administrative
560 agency in a sealed envelope or package for safekeeping while your motion is decided.

561 2. Any party filing a request for a subpoena duces tecum or causing such a subpoena to be issued
562 for an individual's health records shall include a Notice in the same part of the request in which the
563 recipient of the subpoena duces tecum is directed where and when to return the health records. Such
564 notice shall be in boldface capital letters and shall include the following language:

565 NOTICE TO HEALTH CARE ENTITIES

566 A COPY OF THIS SUBPOENA DUCES TECUM HAS BEEN PROVIDED TO THE INDIVIDUAL
567 WHOSE HEALTH RECORDS ARE BEING REQUESTED OR HIS COUNSEL. YOU OR THAT
568 INDIVIDUAL HAS THE RIGHT TO FILE A MOTION TO QUASH (OBJECT TO) THE ATTACHED
569 SUBPOENA. IF YOU ELECT TO FILE A MOTION TO QUASH, YOU MUST FILE THE MOTION
570 WITHIN 15 DAYS OF THE DATE OF THIS SUBPOENA.

571 YOU MUST NOT RESPOND TO THIS SUBPOENA UNTIL YOU HAVE RECEIVED WRITTEN
572 CERTIFICATION FROM THE PARTY ON WHOSE BEHALF THE SUBPOENA WAS ISSUED
573 THAT THE TIME FOR FILING A MOTION TO QUASH HAS ELAPSED AND THAT:

574 NO MOTION TO QUASH WAS FILED; OR

575 ANY MOTION TO QUASH HAS BEEN RESOLVED BY THE COURT OR THE
576 ADMINISTRATIVE AGENCY AND THE DISCLOSURES SOUGHT ARE CONSISTENT WITH
577 SUCH RESOLUTION.

578 IF YOU RECEIVE NOTICE THAT THE INDIVIDUAL WHOSE HEALTH RECORDS ARE
579 BEING REQUESTED HAS FILED A MOTION TO QUASH THIS SUBPOENA, OR IF YOU FILE A
580 MOTION TO QUASH THIS SUBPOENA, YOU MUST SEND THE HEALTH RECORDS ONLY TO
581 THE CLERK OF THE COURT OR ADMINISTRATIVE AGENCY THAT ISSUED THE SUBPOENA
582 OR IN WHICH THE ACTION IS PENDING AS SHOWN ON THE SUBPOENA USING THE
583 FOLLOWING PROCEDURE:

584 PLACE THE HEALTH RECORDS IN A SEALED ENVELOPE AND ATTACH TO THE SEALED
585 ENVELOPE A COVER LETTER TO THE CLERK OF COURT OR ADMINISTRATIVE AGENCY
586 WHICH STATES THAT CONFIDENTIAL HEALTH RECORDS ARE ENCLOSED AND ARE TO BE
587 HELD UNDER SEAL PENDING A RULING ON THE MOTION TO QUASH THE SUBPOENA.
588 THE SEALED ENVELOPE AND THE COVER LETTER SHALL BE PLACED IN AN OUTER
589 ENVELOPE OR PACKAGE FOR TRANSMITTAL TO THE COURT OR ADMINISTRATIVE
590 AGENCY.

591 3. Upon receiving a valid subpoena duces tecum for health records, health care entities shall have the
592 duty to respond to the subpoena in accordance with the provisions of subdivisions 4, 5, 6, 7, and 8.

593 4. Except to deliver to a clerk of the court or administrative agency subpoenaed health records in a
594 sealed envelope as set forth, health care entities shall not respond to a subpoena duces tecum for such
595 health records until they have received a certification as set forth in subdivision 5 or 8 from the party on
596 whose behalf the subpoena duces tecum was issued.

597 If the health care entity has actual receipt of notice that a motion to quash the subpoena has been
598 filed or if the health care entity files a motion to quash the subpoena for health records, then the health
599 care entity shall produce the health records, in a securely sealed envelope, to the clerk of the court or
600 administrative agency issuing the subpoena or in whose court or administrative agency the action is
601 pending. The court or administrative agency shall place the health records under seal until a
602 determination is made regarding the motion to quash. The securely sealed envelope shall only be opened
603 on order of the judge or administrative agency. In the event the court or administrative agency grants
604 the motion to quash, the health records shall be returned to the health care entity in the same sealed
605 envelope in which they were delivered to the court or administrative agency. In the event that a judge or
606 administrative agency orders the sealed envelope to be opened to review the health records in camera, a
607 copy of the order shall accompany any health records returned to the health care entity. The health
608 records returned to the health care entity shall be in a securely sealed envelope.

609 5. If no motion to quash is filed within 15 days of the date of the request or of the attorney-issued
610 subpoena, the party on whose behalf the subpoena was issued shall have the duty to certify to the
611 subpoenaed health care entity that the time for filing a motion to quash has elapsed and that no motion
612 to quash was filed. Any health care entity receiving such certification shall have the duty to comply

613 with the subpoena duces tecum by returning the specified health records by either the return date on the
614 subpoena or five days after receipt of the certification, whichever is later.

615 6. In the event that the individual whose health records are being sought files a motion to quash the
616 subpoena, the court or administrative agency shall decide whether good cause has been shown by the
617 discovering party to compel disclosure of the individual's health records over the individual's objections.
618 In determining whether good cause has been shown, the court or administrative agency shall consider (i)
619 the particular purpose for which the information was collected; (ii) the degree to which the disclosure of
620 the records would embarrass, injure, or invade the privacy of the individual; (iii) the effect of the
621 disclosure on the individual's future health care; (iv) the importance of the information to the lawsuit or
622 proceeding; and (v) any other relevant factor.

623 7. Concurrent with the court or administrative agency's resolution of a motion to quash, if
624 subpoenaed health records have been submitted by a health care entity to the court or administrative
625 agency in a sealed envelope, the court or administrative agency shall: (i) upon determining that no
626 submitted health records should be disclosed, return all submitted health records to the health care entity
627 in a sealed envelope; (ii) upon determining that all submitted health records should be disclosed, provide
628 all the submitted health records to the party on whose behalf the subpoena was issued; or (iii) upon
629 determining that only a portion of the submitted health records should be disclosed, provide such portion
630 to the party on whose behalf the subpoena was issued and return the remaining health records to the
631 health care entity in a sealed envelope.

632 8. Following the court or administrative agency's resolution of a motion to quash, the party on whose
633 behalf the subpoena duces tecum was issued shall have the duty to certify in writing to the subpoenaed
634 health care entity a statement of one of the following:

635 a. All filed motions to quash have been resolved by the court or administrative agency and the
636 disclosures sought in the subpoena duces tecum are consistent with such resolution; and, therefore, the
637 health records previously delivered in a sealed envelope to the clerk of the court or administrative
638 agency will not be returned to the health care entity;

639 b. All filed motions to quash have been resolved by the court or administrative agency and the
640 disclosures sought in the subpoena duces tecum are consistent with such resolution and that, since no
641 health records have previously been delivered to the court or administrative agency by the health care
642 entity, the health care entity shall comply with the subpoena duces tecum by returning the health records
643 designated in the subpoena by the return date on the subpoena or five days after receipt of certification,
644 whichever is later;

645 c. All filed motions to quash have been resolved by the court or administrative agency and the
646 disclosures sought in the subpoena duces tecum are not consistent with such resolution; therefore, no
647 health records shall be disclosed and all health records previously delivered in a sealed envelope to the
648 clerk of the court or administrative agency will be returned to the health care entity;

649 d. All filed motions to quash have been resolved by the court or administrative agency and the
650 disclosures sought in the subpoena duces tecum are not consistent with such resolution and that only
651 limited disclosure has been authorized. The certification shall state that only the portion of the health
652 records as set forth in the certification, consistent with the court or administrative agency's ruling, shall
653 be disclosed. The certification shall also state that health records that were previously delivered to the
654 court or administrative agency for which disclosure has been authorized will not be returned to the
655 health care entity; however, all health records for which disclosure has not been authorized will be
656 returned to the health care entity; or

657 e. All filed motions to quash have been resolved by the court or administrative agency and the
658 disclosures sought in the subpoena duces tecum are not consistent with such resolution and, since no
659 health records have previously been delivered to the court or administrative agency by the health care
660 entity, the health care entity shall return only those health records specified in the certification,
661 consistent with the court or administrative agency's ruling, by the return date on the subpoena or five
662 days after receipt of the certification, whichever is later.

663 A copy of the court or administrative agency's ruling shall accompany any certification made
664 pursuant to this subdivision.

665 9. The provisions of this subsection have no application to subpoenas for health records requested
666 under § 8.01-413, or issued by a duly authorized administrative agency conducting an investigation,
667 audit, review or proceedings regarding a health care entity's conduct.

668 The provisions of this subsection shall apply to subpoenas for the health records of both minors and
669 adults.

670 Nothing in this subsection shall have any effect on the existing authority of a court or administrative
671 agency to issue a protective order regarding health records, including, but not limited to, ordering the
672 return of health records to a health care entity, after the period for filing a motion to quash has passed.

673 A subpoena for substance abuse records must conform to the requirements of federal law found in 42

674 C.F.R. Part 2, Subpart E.

675 I. Health care entities may testify about the health records of an individual in compliance with
676 §§ 8.01-399 and 8.01-400.2.

677 J. If an individual requests a copy of his health record from a health care entity, the health care
678 entity may impose a reasonable cost-based fee, which shall include only the cost of supplies for and
679 labor of copying the requested information, postage when the individual requests that such information
680 be mailed, and preparation of an explanation or summary of such information as agreed to by the
681 individual. For the purposes of this section, "individual" shall subsume a person with authority to act on
682 behalf of the individual who is the subject of the health record in making decisions related to his health
683 care.

684 K. Nothing in this section shall prohibit a health care provider who prescribes or dispenses a
685 controlled substance required to be reported to the Prescription Monitoring Program established pursuant
686 to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 to a patient from disclosing information obtained
687 from the Prescription Monitoring Program and contained in a patient's health care record to another
688 health care provider when such disclosure is related to the care or treatment of the patient who is the
689 subject of the record.

690 **§ 54.1-111. Unlawful acts; prosecution; proceedings in equity; civil penalty.**

691 A. It shall be unlawful for any person, partnership, corporation or other entity to engage in any of
692 the following acts:

693 1. Practicing a profession or occupation without holding a valid license as required by statute or
694 regulation.

695 2. Making use of any designation provided by statute or regulation to denote a standard of
696 professional or occupational competence without being duly certified or licensed.

697 3. Making use of any titles, words, letters or abbreviations which may reasonably be confused with a
698 designation provided by statute or regulation to denote a standard of professional or occupational
699 competence without being duly certified or licensed.

700 4. Performing any act or function which is restricted by statute or regulation to persons holding a
701 professional or occupational license or certification, without being duly certified or licensed.

702 5. Failing to register as a practitioner of a profession or occupation as required by statute or
703 regulation.

704 6. Materially misrepresenting facts in an application for licensure, certification or registration.

705 7. Willfully refusing to furnish a regulatory board information or records required or requested
706 pursuant to statute or regulation.

707 8. Violating any statute or regulation governing the practice of any profession or occupation
708 regulated pursuant to this title.

709 9. Refusing to process a request, tendered in accordance with the regulations of the relevant health
710 regulatory board or applicable statutory law, for patient records or prescription dispensing records after
711 the closing of a business or professional practice or the transfer of ownership of a business or
712 professional practice.

713 Any person who willfully engages in any unlawful act enumerated in this section shall be guilty of a
714 Class 1 misdemeanor. The third or any subsequent conviction for violating this section during a
715 36-month period shall constitute a Class 6 felony. In addition, any person convicted of any unlawful act
716 enumerated in subdivision 1 through 8 of this subsection, for conduct that is within the purview of any
717 regulatory board within the Department of Professional and Occupational Regulation, may be ordered by
718 the court to pay restitution in accordance with §§ 19.2-305 through 19.2-305.4.

719 B. In addition to the criminal penalties provided for in subsection A, the Department of Professional
720 and Occupational Regulation or the Department of Health Professions, without compliance with the
721 Administrative Process Act (§ 2.2-4000 et seq.), shall have the authority to enforce the provisions of
722 subsection A and may institute proceedings in equity to enjoin any person, partnership, corporation or
723 any other entity from engaging in any unlawful act enumerated in this section and to recover a civil
724 penalty of at least \$200 but not more than \$5,000 per violation, with each unlawful act constituting a
725 separate violation; but in no event shall the civil penalties against any one person, partnership,
726 corporation or other entity exceed \$25,000 per year. Such proceedings shall be brought in the name of
727 the Commonwealth by the appropriate Department in the circuit court or general district court of the city
728 or county in which the unlawful act occurred or in which the defendant resides.

729 C. This section shall not be construed to prohibit or prevent the owner of patient records from (i)
730 retaining copies of his patient records or prescription dispensing records after the closing of a business
731 or professional practice or the transfer of ownership of a business or professional practice or (ii)
732 charging a reasonable fee, in accordance with subsections A and B B2, B3, B4, and B6 of § 8.01-413 or
733 subsection J of § 32.1-127.1:03, for copies of patient records, as applicable under the circumstances.

734 D. Nothing in this section, nor §§ 13.1-543, 13.1-1102, 54.1-2902, and 54.1-2929, shall be construed
735 to prohibit or prevent any entity of a type listed in § 13.1-542.1 or 13.1-1101.1, which employs or

736 contracts with an individual licensed by a health regulatory board, from (i) practicing or engaging in the
737 practice of a profession or occupation for which such individual is licensed, (ii) providing or rendering
738 professional services related thereto through the licensed individual, or (iii) having a legitimate interest
739 in enforcing the terms of employment or its contract with the licensed individual.
740 E. This section shall apply, mutatis mutandis, to all persons holding a multistate licensure privilege
741 to practice nursing in the Commonwealth of Virginia.

ENGROSSED

HB 1689E