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SENATE BILL NO. 540

Senate Amendments in [] - February 3, 2020

A BILL to amend and reenact §§ 54.1-2400.6 and 54.1-2909 of the Code of Virginia, relating to health professionals; unprofessional conduct; reporting.

Patrons Prior to Engrossment—Senators Vogel and Kiggans

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2400.6 and 54.1-2909 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2400.6. Hospitals, other health care institutions, home health and hospice organizations, and assisted living facilities required to report disciplinary actions against and certain disorders of health professionals; immunity from liability; failure to report.

A. The chief executive officer and the chief of staff of every hospital or other health care institution in the Commonwealth, the director of every licensed home health or hospice organization, the director of every accredited home health organization exempt from licensure, the administrator of every licensed assisted living facility, and the administrator of every provider licensed by the Department of Behavioral Health and Developmental Services in the Commonwealth shall report within 30 days, except as provided in ~~subsection B subdivision 1~~, to the Director of the Department of Health Professions, or in the case of a director of a home health or hospice organization, to the Office of Licensure and Certification at the Department of Health (the Office), the following information regarding any person (i) licensed, certified, or registered by a health regulatory board or (ii) holding a multistate licensure privilege to practice nursing or an applicant for licensure, certification or registration unless exempted under subsection E:

1. Any information of which he may become aware in his official capacity indicating *a reasonable belief* that such a health professional is in need of treatment or has been ~~committed or~~ voluntarily admitted as a patient, either at his institution or any other health care institution, for treatment of substance abuse or a psychiatric illness that may render the health professional a danger to himself, the public or his patients. *If such health care professional has been involuntarily admitted as a patient, either in his own institution or any other health care institution, for treatment of substance abuse or a psychiatric illness, the report required by this section shall be made within five days of the date on which the chief executive officer, chief of staff, director, or administrator [learns learns] of the health care professional's involuntary admission.*

2. Any information of which he may become aware in his official capacity indicating *a reasonable belief*, after ~~reasonable review and, if necessary, an investigation and or consultation as needed~~ with the appropriate internal boards or committees authorized to impose disciplinary action on a health professional, that ~~there is a reasonable probability that such a~~ health professional may have engaged in unethical, fraudulent or unprofessional conduct as defined by the pertinent licensing statutes and regulations. The report required under this subdivision shall be submitted within 30 days of the date that the chief executive officer, chief of staff, director, or administrator determines that *a such reasonable probability exists belief exists*.

3. Any disciplinary proceeding begun by the institution, organization, facility, or provider as a result of conduct involving (i) intentional or negligent conduct that causes or is likely to cause injury to a patient or patients, (ii) professional ethics, (iii) professional incompetence, (iv) moral turpitude, or (v) substance abuse. The report required under this subdivision shall be submitted within 30 days of the date of written communication to the health professional notifying him of the initiation of a disciplinary proceeding.

4. Any disciplinary action taken during or at the conclusion of disciplinary proceedings or while under investigation, including but not limited to denial or termination of employment, denial or termination of privileges or restriction of privileges that results from conduct involving (i) intentional or negligent conduct that causes or is likely to cause injury to a patient or patients, (ii) professional ethics, (iii) professional incompetence, (iv) moral turpitude, or (v) substance abuse. The report required under this subdivision shall be submitted within 30 days of the date of written communication to the health professional notifying him of any disciplinary action.

5. The voluntary resignation from the staff of the health care institution, home health or hospice organization, assisted living facility, or provider, or voluntary restriction or expiration of privileges at the institution, organization, facility, or provider, of any health professional while such health professional is

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59 under investigation or is the subject of disciplinary proceedings taken or begun by the institution,
60 organization, facility, or provider or a committee thereof for any reason related to possible intentional or
61 negligent conduct that causes or is likely to cause injury to a patient or patients, medical incompetence,
62 unprofessional conduct, moral turpitude, mental or physical impairment, or substance abuse.

63 Any report required by this section shall be in writing directed to the Director of the Department of
64 Health Professions or to the Director of the Office of Licensure and Certification at the Department of
65 Health, shall give the name ~~and~~, address, *and date of birth* of the person who is the subject of the report
66 and shall fully describe the circumstances surrounding the facts required to be reported. The report shall
67 include the names and contact information of individuals with knowledge about the facts required to be
68 reported and the names and contact information of individuals from whom the hospital or health care
69 institution, organization, facility, or provider sought information to substantiate the facts required to be
70 reported. All relevant medical records shall be attached to the report if patient care or the health
71 professional's health status is at issue. The reporting hospital, health care institution, home health or
72 hospice organization, assisted living facility, or provider shall also provide notice to the Department or
73 the Office that it has submitted a report to the National Practitioner Data Bank under the Health Care
74 Quality Improvement Act (42 U.S.C. § 11101 et seq.). The reporting hospital, health care institution,
75 home health or hospice organization, assisted living facility, or provider shall give the health
76 professional who is the subject of the report an opportunity to review the report. The health professional
77 may submit a separate report if he disagrees with the substance of the report.

78 This section shall not be construed to require the hospital, health care institution, home health or
79 hospice organization, assisted living facility, or provider to submit any proceedings, minutes, records, or
80 reports that are privileged under § 8.01-581.17, except that the provisions of § 8.01-581.17 shall not bar
81 (i) any report required by this section or (ii) any requested medical records that are necessary to
82 investigate unprofessional conduct reported pursuant to this subtitle or unprofessional conduct that
83 should have been reported pursuant to this subtitle. Under no circumstances shall compliance with this
84 section be construed to waive or limit the privilege provided in § 8.01-581.17. No person or entity shall
85 be obligated to report any matter to the Department or the Office if the person or entity has actual
86 notice that the same matter has already been reported to the Department or the Office.

87 ~~B. Any report required by this section concerning the commitment or admission of such health~~
88 ~~professional as a patient shall be made within five days of when the chief executive officer, chief of~~
89 ~~staff, director, or administrator learns of such commitment or admission.~~

90 ~~C. The State Health Commissioner, Commissioner of Social Services, and Commissioner of~~
91 ~~Behavioral Health and Developmental Services shall report to the Department any information of which~~
92 ~~their agencies may become aware in the course of their duties that a health professional may be guilty~~
93 ~~of fraudulent, unethical, or unprofessional conduct as defined by the pertinent licensing statutes and~~
94 ~~regulations. However, the State Health Commissioner shall not be required to report information~~
95 ~~reported to the Director of the Office of Licensure and Certification pursuant to this section to the~~
96 ~~Department of Health Professions.~~

97 ~~D. C. Any person making a report by this section, providing information pursuant to an investigation~~
98 ~~or testifying in a judicial or administrative proceeding as a result of such report shall be immune from~~
99 ~~any civil liability alleged to have resulted therefrom unless such person acted in bad faith or with~~
100 ~~malicious intent.~~

101 ~~E. D. Medical records or information learned or maintained in connection with an alcohol or drug~~
102 ~~prevention function that is conducted, regulated, or directly or indirectly assisted by any department or~~
103 ~~agency of the United States shall be exempt from the reporting requirements of this section to the extent~~
104 ~~that such reporting is in violation of 42 U.S.C. § 290dd-2 or regulations adopted thereunder.~~

105 ~~F. E. Any person who fails to make a report to the Department as required by this section shall be~~
106 ~~subject to a civil penalty not to exceed \$25,000 assessed by the Director. The Director shall report the~~
107 ~~assessment of such civil penalty to the Commissioner of Health, Commissioner of Social Services, or~~
108 ~~Commissioner of Behavioral Health and Developmental Services, as appropriate. Any person assessed a~~
109 ~~civil penalty pursuant to this section shall not receive a license or certification or renewal of such unless~~
110 ~~such penalty has been paid pursuant to § 32.1-125.01. The Medical College of Virginia Hospitals and~~
111 ~~the University of Virginia Hospitals shall not receive certification pursuant to § 32.1-137 or Article 1.1~~
112 ~~(§ 32.1-102.1 et seq.) of Chapter 4 of Title 32.1 unless such penalty has been paid.~~

113 **§ 54.1-2909. Further reporting requirements; civil penalty; disciplinary action.**

114 A. The following matters shall be reported within 30 days of their occurrence to the Board:

- 115 1. Any disciplinary action taken against a person licensed under this chapter in another state or in a
116 federal health institution or voluntary surrender of a license in another state while under investigation;
- 117 2. Any malpractice judgment against a person licensed under this chapter;
- 118 3. Any settlement of a malpractice claim against a person licensed under this chapter; and
- 119 4. Any evidence that indicates a reasonable ~~probability~~ *belief* that a person licensed under this
120 chapter is or may be professionally incompetent; has *or may have* engaged in intentional or negligent

conduct that causes or is likely to cause injury to a patient or patients; has *or may have* engaged in unprofessional conduct; or may be mentally or physically unable to engage safely in the practice of his profession.

The reporting requirements set forth in this section shall be met if these matters are reported to the National Practitioner Data Bank under the Health Care Quality Improvement Act, 42 U.S.C. § 11101 et seq., and notice that such a report has been submitted is provided to the Board.

B. The following persons and entities are subject to the reporting requirements set forth in this section:

1. Any person licensed under this chapter who is the subject of a disciplinary action, settlement, judgment or evidence for which reporting is required pursuant to this section;

2. Any other person licensed under this chapter, except as provided in the protocol agreement entered into by the Medical Society of Virginia and the Board for the Operation of the Impaired Physicians Program;

3. The presidents of all professional societies in the Commonwealth, and their component societies whose members are regulated by the Board, except as provided for in the protocol agreement entered into by the Medical Society of Virginia and the Board for the Operation of the Impaired Physicians Program;

4. All health care institutions licensed by the Commonwealth;

5. The malpractice insurance carrier of any person who is the subject of a judgment or settlement; and

6. Any health maintenance organization licensed by the Commonwealth.

C. No person or entity shall be obligated to report any matter to the Board if the person or entity has actual notice that the matter has already been reported to the Board.

D. Any report required by this section shall be in writing directed to the Board, shall give the name and address of the person who is the subject of the report and shall describe the circumstances surrounding the ~~facts~~ *matter* required to be reported. Under no circumstances shall compliance with this section be construed to waive or limit the privilege provided in § 8.01-581.17.

E. Any person making a report required by this section, providing information pursuant to an investigation or testifying in a judicial or administrative proceeding as a result of such report shall be immune from any civil liability or criminal prosecution resulting therefrom unless such person acted in bad faith or with malicious intent.

F. The clerk of any circuit court or any district court in the Commonwealth shall report to the Board the conviction of any person known by such clerk to be licensed under this chapter of any (i) misdemeanor involving a controlled substance, marijuana or substance abuse or involving an act of moral turpitude or (ii) felony.

G. Any person who fails to make a report to the Board as required by this section shall be subject to a civil penalty not to exceed \$5,000. The Director shall report the assessment of such civil penalty to the Commissioner of the Department of Health or the Commissioner of Insurance at the State Corporation Commission. Any person assessed a civil penalty pursuant to this section shall not receive a license, registration or certification or renewal of such unless such penalty has been paid.

H. Disciplinary action against any person licensed, registered or certified under this chapter shall be based upon the underlying conduct of the person and not upon the report of a settlement or judgment submitted under this section.