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SENATE BILL NO. 1320

Offered January 13, 2021

Prefiled January 12, 2021

A *BILL to amend and reenact § 54.1-2900 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 54.1-2957.04, relating to licensed certified midwives; licensure; practice.*

Patrons—Lucas, Hashmi, Kiggans, McClellan and Spruill; Delegate: Kory

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-2900 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 54.1-2957.04 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.

"Birth control" means contraceptive methods that are approved by the U.S. Food and Drug Administration. "Birth control" shall not be considered abortion for the purposes of Title 18.2.

"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.

"Collaboration" means the communication and decision-making process among health care providers who are members of a patient care team related to the treatment of a patient that includes the degree of cooperation necessary to provide treatment and care of the patient and includes (i) communication of data and information about the treatment and care of a patient, including the exchange of clinical observations and assessments, and (ii) development of an appropriate plan of care, including decisions regarding the health care provided, accessing and assessment of appropriate additional resources or expertise, and arrangement of appropriate referrals, testing, or studies.

"Consultation" means communicating data and information, exchanging clinical observations and assessments, accessing and assessing additional resources and expertise, problem-solving, and arranging for referrals, testing, or studies.

"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.

"Licensed certified midwife" means a person who is licensed as a certified midwife by the Boards of Medicine and Nursing.

"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

INTRODUCED

SB1320

59 Boards of Medicine and Nursing pursuant to § 54.1-2957.

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

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

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

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

72 "Physician assistant" means a health care professional who has met the requirements of the Board for
73 licensure as a physician assistant.

74 "Practice of acupuncture" means the stimulation of certain points on or near the surface of the body
75 by the insertion of needles to prevent or modify the perception of pain or to normalize physiological
76 functions, including pain control, for the treatment of certain ailments or conditions of the body and
77 includes the techniques of electroacupuncture, cupping and moxibustion. The practice of acupuncture
78 does not include the use of physical therapy, chiropractic, or osteopathic manipulative techniques; the
79 use or prescribing of any drugs, medications, serums or vaccines; or the procedure of auricular
80 acupuncture as exempted in § 54.1-2901 when used in the context of a chemical dependency treatment
81 program for patients eligible for federal, state or local public funds by an employee of the program who
82 is trained and approved by the National Acupuncture Detoxification Association or an equivalent
83 certifying body.

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

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

95 "Practice of chiropractic" means the adjustment of the 24 movable vertebrae of the spinal column,
96 and assisting nature for the purpose of normalizing the transmission of nerve energy, but does not
97 include the use of surgery, obstetrics, osteopathy, or the administration or prescribing of any drugs,
98 medicines, serums, or vaccines. "Practice of chiropractic" shall include (i) requesting, receiving, and
99 reviewing a patient's medical and physical history, including information related to past surgical and
100 nonsurgical treatment of the patient and controlled substances prescribed to the patient, and (ii)
101 documenting in a patient's record information related to the condition and symptoms of the patient, the
102 examination and evaluation of the patient made by the doctor of chiropractic, and treatment provided to
103 the patient by the doctor of chiropractic. "Practice of chiropractic" shall also include performing the
104 physical examination of an applicant for a commercial driver's license or commercial learner's permit
105 pursuant to § 46.2-341.12 if the practitioner has (i) applied for and received certification as a medical
106 examiner pursuant to 49 C.F.R. Part 390, Subpart D and (ii) registered with the National Registry of
107 Certified Medical Examiners.

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

119 "Practice of licensed certified midwifery" means the provision of primary health care for
120 preadolescents, adolescents, and adults within the scope of practice of a certified midwife established in

accordance with the Standards for the Practice of Midwifery set by the American College of Nurse-Midwives, including (i) providing sexual and reproductive care and care during pregnancy and childbirth, postpartum care, and care for the newborn for up to 28 days following the birth of the child; (ii) prescribing of pharmacological and non-pharmacological therapies within the scope of the practice of midwifery; (iii) consulting or collaborating with or referring patients to such other health care providers as may be appropriate for the care of the patients; and (iv) serving as an educator in the theory and practice of midwifery.

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

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

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

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

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

"Practice of surgical assisting" means the performance of significant surgical tasks, including manipulation of organs, suturing of tissue, placement of hemostatic agents, injection of local anesthetic, harvesting of veins, implementation of devices, and other duties as directed by a licensed doctor of medicine, osteopathy, or podiatry under the direct supervision of a licensed doctor of medicine, osteopathy, or podiatry.

"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

182 Department of Health, or other procedures that contribute to any significant extent to the site or dosage
183 of ionizing radiation to which a patient is exposed.

184 "Radiologic technologist, limited" means an individual, other than a licensed radiologic technologist,
185 dental hygienist, or person who is otherwise authorized by the Board of Dentistry under Chapter 27
186 (§ 54.1-2700 et seq.) and the regulations pursuant thereto, who performs diagnostic radiographic
187 procedures employing equipment that emits ionizing radiation that is limited to specific areas of the
188 human body.

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

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

202 "Surgical assistant" means an individual who has met the requirements of the Board for licensure as
203 a surgical assistant and who works under the direct supervision of a licensed doctor of medicine,
204 osteopathy, or podiatry.

205 **§ 54.1-2957.04. Licensure as a licensed certified midwife; practice as a licensed certified midwife;**
206 **use of title; required disclosures.**

207 *A. It shall be unlawful for any person to practice or to hold himself out as practicing as a licensed*
208 *certified midwife or use in connection with his name the words "Licensed Certified Midwife" unless he*
209 *holds a license as such issued jointly by the Boards of Medicine and Nursing.*

210 *B. The Boards of Medicine and Nursing shall jointly adopt regulations for the licensure of licensed*
211 *certified midwives, which shall include criteria for licensure and renewal of a license as a certified*
212 *midwife that shall include a requirement that the applicant provide evidence satisfactory to the Boards*
213 *of current certification as a certified midwife by the American Midwifery Certification Board and that*
214 *shall be consistent with the requirements for certification as a certified midwife established by the*
215 *American Midwifery Certification Board.*

216 *C. The Boards of Medicine and Nursing may issue a license by endorsement to an applicant to*
217 *practice as a licensed certified midwife if the applicant has been licensed as a certified midwife under*
218 *the laws of another state and, pursuant to regulations of the Boards, the applicant meets the*
219 *qualifications for licensure as a licensed certified midwife in the Commonwealth.*

220 *D. Licensed certified midwives shall practice in accordance with regulations jointly adopted by the*
221 *Boards of Medicine and Nursing, which shall be consistent with the Standards for the Practice of*
222 *Midwifery set by the American College of Nurse-Midwives governing the practice of midwifery.*

223 *E. Notwithstanding any provision of law or regulation to the contrary, a licensed certified midwife*
224 *may prescribe Schedules II through VI controlled substances in accordance with regulations of the*
225 *Boards of Medicine and Nursing.*

226 *F. A licensed certified midwife who provides health care services to a patient outside of a hospital or*
227 *birthing center shall disclose to that patient, when appropriate, information on health risks associated*
228 *with births outside of a hospital or birthing center, including but not limited to risks associated with*
229 *vaginal births after a prior cesarean section, breech births, births by women experiencing high-risk*
230 *pregnancies, and births involving multiple gestation. As used in this subsection, "birthing center" shall*
231 *have the same meaning as in § 54.1-2957.03.*

232 *G. A licensed certified midwife who provides health care to a patient shall be liable for the midwife's*
233 *negligent, grossly negligent, or willful and wanton acts or omissions. Except as otherwise provided by*
234 *law, any (i) doctor of medicine or osteopathy who did not collaborate or consult with the midwife*
235 *regarding the patient and who has not previously treated the patient for this pregnancy, (ii) physician*
236 *assistant, (iii) nurse practitioner, (iv) prehospital emergency medical personnel, or (v) hospital as*
237 *defined in § 32.1-123, or any employee of, person providing services pursuant to a contract with, or*
238 *agent of such hospital, that provides screening and stabilization health care services to a patient as a*
239 *result of a licensed certified midwife's negligent, grossly negligent, or willful and wanton acts or*
240 *omissions shall be immune from liability for acts or omissions constituting ordinary negligence.*

241 **2. That the Department of Health Professions shall convene a workgroup to study the licensure**
242 **and regulation of certified nurse midwives, certified midwives, and certified professional midwives**
243 **to determine the appropriate licensing entity for such professionals. The Department shall report**

244 its findings and conclusions to the Governor and the General Assembly by November 1, 2021.

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SB1320