

21101126D

SENATE BILL NO. 1205

Offered January 13, 2021

Prefiled January 11, 2021

A *BILL to amend and reenact §§ 8.01-581.16, 54.1-2400.6, and 54.1-2909 of the Code of Virginia, relating to programs to address career fatigue and wellness in certain health care providers; civil immunity.*

Patron—Barker

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-581.16, 54.1-2400.6, and 54.1-2909 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-581.16. Civil immunity for members of or consultants to certain boards or committees.

A. Every member of, or health care professional consultant to, any committee, board, group, commission or other entity shall be immune from civil liability for any act, decision, omission, or utterance done or made in performance of his duties while serving as a member of or consultant to such committee, board, group, commission or other entity that functions primarily to review, evaluate, or make recommendations on (i) the duration of patient stays in health care facilities; (ii) the professional services furnished with respect to the medical, dental, psychological, podiatric, chiropractic, veterinary, or optometric necessity for such services; (iii) the purpose of promoting the most efficient use or monitoring the quality of care of available health care facilities and services, or of emergency medical services agencies and services; (iv) the adequacy or quality of professional services; (v) the competency and qualifications for professional staff privileges; (vi) the reasonableness or appropriateness of charges made by or on behalf of health care facilities; (vii) patient safety, including entering into contracts with patient safety organizations, provided that such committee, board, group, commission, or other entity has been established pursuant to federal or state law or regulation, the requirements of a national accrediting organization granted authority by the Centers for Medicare and Medicaid Services to assure compliance with Medicare conditions of participation pursuant to § 1865 of Title XVIII of the Social Security Act (42 U.S.C. § 1395bb), or guidelines approved or adopted by a statewide or local association representing health care providers licensed in the Commonwealth pursuant to clause (iii) (f) of subsection B of § 8.01-581.17, or established and duly constituted by one or more public or licensed private hospitals, health systems, community services boards, or behavioral health authorities, or with a governmental agency, and provided further that such act, decision, omission, or utterance is not done or made in bad faith or with malicious intent.

B. Every member of, or health care professional consultant to, any committee, board, group, commission, or other entity that functions primarily to review, evaluate, or make recommendations on a professional program to address issues related to career fatigue and wellness in health care professionals licensed to practice medicine or osteopathic medicine or licensed as a physician assistant, registered, or certified by the Boards of Medicine, Nursing, or Pharmacy, or in students enrolled in a school of medicine, osteopathic medicine, nursing, or pharmacy located in the Commonwealth, that is established or contracted for by a statewide association, that is exempt under 26 U.S.C. § 501(c)(6) of the Internal Revenue Code, and that primarily represents health care professionals licensed to practice medicine or osteopathic medicine in multiple specialties shall be immune from civil liability for any act, decision, omission, or utterance done or made in performance of his duties while serving as a member of or consultant to such committee, board, group, commission, or other entity. No active participant in a professional program described in this subsection shall be employed or engaged by such professional program or have a financial ownership interest in such professional program.

§ 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 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

INTRODUCED

SB1205

59 Department of Health (the Office), the following information regarding any person (i) licensed, certified,
60 or registered by a health regulatory board or (ii) holding a multistate licensure privilege to practice
61 nursing or an applicant for licensure, certification or registration unless exempted under subsection E:

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

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

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

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

90 5. The voluntary resignation from the staff of the health care institution, home health or hospice
91 organization, assisted living facility, or provider, or voluntary restriction or expiration of privileges at the
92 institution, organization, facility, or provider, of any health professional while such health professional is
93 under investigation or is the subject of disciplinary proceedings taken or begun by the institution,
94 organization, facility, or provider or a committee thereof for any reason related to possible intentional or
95 negligent conduct that causes or is likely to cause injury to a patient or patients, medical incompetence,
96 unprofessional conduct, moral turpitude, mental or physical impairment, or substance abuse.

97 Any report required by this section shall be in writing directed to the Director of the Department of
98 Health Professions or to the Director of the Office of Licensure and Certification at the Department of
99 Health, shall give the name, address, and date of birth of the person who is the subject of the report and
100 shall fully describe the circumstances surrounding the facts required to be reported. The report shall
101 include the names and contact information of individuals with knowledge about the facts required to be
102 reported and the names and contact information of individuals from whom the hospital or health care
103 institution, organization, facility, or provider sought information to substantiate the facts required to be
104 reported. All relevant medical records shall be attached to the report if patient care or the health
105 professional's health status is at issue. The reporting hospital, health care institution, home health or
106 hospice organization, assisted living facility, or provider shall also provide notice to the Department or
107 the Office that it has submitted a report to the National Practitioner Data Bank under the Health Care
108 Quality Improvement Act (42 U.S.C. § 11101 et seq.). The reporting hospital, health care institution,
109 home health or hospice organization, assisted living facility, or provider shall give the health
110 professional who is the subject of the report an opportunity to review the report. The health professional
111 may submit a separate report if he disagrees with the substance of the report.

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

entity shall be obligated to report a health care provider who is participating in a professional program as described in subsection B of § 8.01-581.16 unless there is a reasonable belief that the participant is not competent to continue to practice or is a danger to himself or to the health and welfare of his patients or the public.

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

C. Any person making a report 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 alleged to have resulted therefrom unless such person acted in bad faith or with malicious intent.

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

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

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

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

1. Any disciplinary action taken against a person licensed under this chapter in another state or in a federal health institution or voluntary surrender of a license in another state while under investigation;
2. Any malpractice judgment against a person licensed under this chapter;
3. Any settlement of a malpractice claim against a person licensed under this chapter; and
4. Any evidence that indicates a reasonable belief that a person licensed under this 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.

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, a settlement, a judgment, or evidence for which reporting is required pursuant to this section;
2. Any other person licensed under this chapter, except as provided by a contract agreement with the Health Practitioners' Monitoring Program;
3. All health care institutions licensed by the Commonwealth;
4. The malpractice insurance carrier of any person who is the subject of a judgment or settlement; and
5. 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. 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 report has been submitted is provided to the Board.

D. No person or entity shall be obligated to report information regarding a health care provider licensed to practice medicine or osteopathic medicine or licensed as a physician assistant or registered by the Board who is a participant in a professional program, pursuant to subsection B of § 8.01-581.16, to address issues related to career fatigue and wellness that is organized or contracted for by a statewide association exempt under 26 U.S.C. § 501(c)(6) of the Internal Revenue Code and that primarily represents health care professionals licensed to practice medicine or osteopathic medicine in multiple specialties to the Board unless the person or entity has determined that there is reasonable probability that the participant is not competent to continue in practice or is a danger to himself or to the health and welfare of his patients or the public.

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

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

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

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

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

202 **2. That an emergency exists and this act is in force from its passage.**