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SENATE BILL NO. 716

Offered January 19, 2024

A *BILL to amend and reenact § 54.1-2915 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 8.01-225.04 and by adding a section numbered 19.2-10.5, relating to the Virginia Contraception and Reproductive Health Care Protection Act.*

Patrons—Carroll Foy and Perry

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-2915 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 8.01-225.04 and by adding a section numbered 19.2-10.5 as follows:

§ 8.01-225.04. Health care providers; reproductive health care services; action for frivolous, etc., suits.

A. As used in this section, "reproductive health care services" means medical, pharmaceutical, surgical, counseling, or referral services relating to the human reproductive system, including services relating to pregnancy, contraception, or abortion.

B. In any case in which an action against a licensed health care provider lawfully providing reproductive health care services is dismissed, and such an action was found to be frivolous, vexatious, or primarily for the purposes of harassment, or otherwise sanctionable pursuant to the provisions of § 8.01-271.1, such health care provider may bring an action to recover damages sustained, together with costs and any reasonable attorney fees, against the underlying plaintiff whose suit was dismissed.

C. The provisions of this section shall be in addition to and not in lieu of any other relief available.

D. No action shall be commenced under this section more than two years after the dismissal of the underlying suit.

§ 19.2-10.5. Law-enforcement investigations related to reproductive health care services and menstrual health data; civil action.

A. As used in this title:

"Menstrual health data" means any information, recorded in any form or medium, that is created or received by an entity that relates to or is used to determine, predict, or estimate the past, present, or future menstrual health or menstrual status of an individual.

"Reproductive health care services" means medical, pharmaceutical, surgical, counseling, or referral services relating to the human reproductive system, including services relating to pregnancy, contraception, or abortion.

B. Notwithstanding any other provision of law, no law-enforcement officer acting in the Commonwealth or employed by the Commonwealth or any of its localities or political subdivisions may investigate, arrest, or detain any person, seek the issuance of a warrant, or otherwise assist in or provide support for any investigation regarding either the provision or receipt of reproductive health care services not prohibited under the laws of the Commonwealth or any person's menstrual health data.

C. Notwithstanding any other provision of law, no law-enforcement officer acting in the Commonwealth or employed by the Commonwealth or any of its localities or political subdivisions may provide information to any law-enforcement officer of any other jurisdiction or any private citizen relating to reproductive health care services not prohibited under the laws of the Commonwealth or any person's menstrual health data.

D. Any person who is the subject of any investigation subject to subsection B or who is the subject of any information subject to subsection C may bring a civil action to enforce the terms of this section. The only relief that may be awarded in a civil action brought under this subsection is declaratory, injunctive, or other equitable relief. No monetary damages, penalties, costs, expenses, expert fees, or attorney fees may be awarded in any such action.

E. A civil action under subsection D may be filed in the court for the city or county where the person filing suit resides or has their principal place of business or in the courts for the City of Richmond within two years upon the discovery of a violation of this section.

F. The Commonwealth, its agencies, localities, and political subdivisions, and all officers, employees, and agents of the Commonwealth, its agencies, its localities, and its political subdivisions, waive immunity as to the imposition of declaratory, injunctive, or other equitable relief for any action brought pursuant to this section.

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

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

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

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

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

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

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

6. Undertaking in any manner or by any means whatsoever to procure or perform or aid or abet in procuring or performing ~~a criminal~~ *an abortion that is prohibited by the laws of the Commonwealth*;

7. Engaging in the practice of any of the healing arts under a false or assumed name, or impersonating another practitioner of a like, similar, or different name;

8. Prescribing or dispensing any controlled substance with intent or knowledge that it will be used otherwise than medicinally, or for accepted therapeutic purposes, or with intent to evade any law with respect to the sale, use, or disposition of such drug;

9. Violating provisions of this chapter on division of fees or practicing any branch of the healing arts in violation of the provisions of this chapter;

10. Knowingly and willfully committing an act that is a felony under the laws of the Commonwealth or the United States, or any act that is a misdemeanor under such laws and involves moral turpitude;

11. Aiding or abetting, having professional connection with, or lending his name to any person known to him to be practicing illegally any of the healing arts;

12. Conducting his practice in a manner contrary to the standards of ethics of his branch of the healing arts;

13. Conducting his practice in such a manner as to be a danger to the health and welfare of his patients or to the public;

14. Inability to practice with reasonable skill or safety because of illness or substance abuse;

15. Publishing in any manner an advertisement relating to his professional practice that contains a claim of superiority or violates Board regulations governing advertising;

16. Performing any act likely to deceive, defraud, or harm the public;

17. Violating any provision of statute or regulation, state or federal, relating to the manufacture, distribution, dispensing, or administration of drugs;

18. Violating or cooperating with others in violating any of the provisions of Chapters 1 (§ 54.1-100 et seq.), 24 (§ 54.1-2400 et seq.) and this chapter or regulations of the Board;

19. Engaging in sexual contact with a patient concurrent with and by virtue of the practitioner and patient relationship or otherwise engaging at any time during the course of the practitioner and patient relationship in conduct of a sexual nature that a reasonable patient would consider lewd and offensive;

20. Conviction in any state, territory, or country of any felony or of any crime involving moral turpitude;

21. Adjudication of legal incompetence or incapacity in any state if such adjudication is in effect and the person has not been declared restored to competence or capacity;

22. Performing the services of a medical examiner as defined in 49 C.F.R. § 390.5 if, at the time such services are performed, the person performing such services is not listed on the National Registry of Certified Medical Examiners as provided in 49 C.F.R. § 390.109 or fails to meet the requirements for continuing to be listed on the National Registry of Certified Medical Examiners as provided in 49 C.F.R. § 390.111;

23. Failing or refusing to complete and file electronically using the Electronic Death Registration System any medical certification in accordance with the requirements of subsection C of § 32.1-263. However, failure to complete and file a medical certification electronically using the Electronic Death Registration System in accordance with the requirements of subsection C of § 32.1-263 shall not constitute unprofessional conduct if such failure was the result of a temporary technological or electrical failure or other temporary extenuating circumstance that prevented the electronic completion and filing of the medical certification using the Electronic Death Registration System; or

24. Engaging in a pattern of violations of § 38.2-3445.01.

B. The commission or conviction of an offense in another state, territory, or country, which if committed in Virginia would be a felony, shall be treated as a felony conviction or commission under

121 this section regardless of its designation in the other state, territory, or country.

122 C. The Board shall refuse to issue a certificate or license to any applicant if the candidate or
123 applicant has had his certificate or license to practice a branch of the healing arts revoked or suspended,
124 and has not had his certificate or license to so practice reinstated, in another state, the District of
125 Columbia, a United States possession or territory, or a foreign jurisdiction.

126 *D. Notwithstanding any other law, the Board may not take any action identified in subsection A*
127 *based on the alleged provision or receipt of abortion care not prohibited under the laws of the*
128 *Commonwealth, regardless of where such abortion care was provided or received.*