

VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

CHAPTER 937

An Act to amend and reenact §§ 8.01-399, 8.01-581.13, 8.01-581.19, 8.01-581.19:1, 19.2-169.5, 19.2-182.2, 19.2-182.5, 19.2-182.8, 19.2-182.9, 19.2-264.3:1, 32.1-135.2, 37.1-186.1, 54.1-2900, as it is currently effective and as it will become effective, 54.1-2901, 54.1-2902, 54.1-2903, 54.1-2904, 54.1-2907, 54.1-2908, 54.1-2929, 54.1-2940, 54.1-3600, 54.1-3601, 54.1-3603, 54.1-3604, 54.1-3605, 54.1-3606, and 54.1-3608 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 36 of Title 54.1 sections numbered 54.1-3612 through 54.1-3616; and to repeal § 54.1-3607 of the Code of Virginia, relating to professional regulation; practice of psychology; penalty.

[S 428]

Approved April 17, 1996

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-399, 8.01-581.13, 8.01-581.19, 8.01-581.19:1, 19.2-169.5, 19.2-182.2, 19.2-182.5, 19.2-182.8, 19.2-182.9, 19.2-264.3:1, 32.1-135.2, 37.1-186.1, 54.1-2900, as it is currently effective and as it will become effective, 54.1-2901, 54.1-2902, 54.1-2903, 54.1-2904, 54.1-2907, 54.1-2908, 54.1-2929, 54.1-2940, 54.1-3600, 54.1-3601, 54.1-3603, 54.1-3604, 54.1-3605, 54.1-3606, and 54.1-3608 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 36 of Title 54.1 sections numbered 54.1-3612 through 54.1-3616 as follows:

§ 8.01-399. Communications between physicians and patients.

A. Except at the request or with the consent of the patient, no duly licensed practitioner of any branch of the healing arts shall be required to testify in any civil action, respecting any information which he may have acquired in attending, examining or treating the patient in a professional capacity.

B. Notwithstanding subsection A, when the physical or mental condition of the patient is at issue in a civil action, facts communicated to, or otherwise learned by, such practitioner in connection with such attendance, examination or treatment shall be disclosed but only in discovery pursuant to the Rules of Court or through testimony at the trial of the action. In addition, disclosure may be ordered when a court, in the exercise of sound discretion, deems it necessary to the proper administration of justice. However, no disclosure of facts communicated to, or otherwise learned by, such practitioner shall occur if the court determines, upon the request of the patient, that such facts are not relevant to the subject matter involved in the pending action or do not appear to be reasonably calculated to lead to the discovery of admissible evidence.

C. This section shall not (i) be construed to repeal or otherwise affect the provisions of § 65.2-607 relating to privileged communications between physicians and surgeons and employees under the Workers' Compensation Act or (ii) apply to information communicated to any such practitioner in an effort unlawfully to procure a narcotic drug, or unlawfully to procure the administration of any such drug.

D. Neither a lawyer, nor anyone acting on the lawyer's behalf, shall obtain, in connection with pending or threatened litigation, information from a practitioner of any branch of the healing arts without the consent of the patient except through discovery pursuant to the Rules of the Court as herein provided.

E. A clinical psychologist duly licensed under the provisions of ~~§ 54.1-2940 Chapter 36~~ (§ 54.1-3600 *et seq.*) of Title 54.1 shall be considered a practitioner of a branch of the healing arts within the meaning of this section.

F. Nothing herein shall prevent a duly licensed practitioner of the healing arts from disclosing any information which he may have acquired in attending, examining or treating a patient in a professional capacity where such disclosure is necessary in connection with the care of the patient, the protection or enforcement of the practitioner's legal rights including such rights with respect to medical malpractice actions, or the operations of a health care facility or health maintenance organization or in order to comply with state or federal law.

§ 8.01-581.13. Civil immunity for certain health professionals and health profession students serving as members of certain entities.

A. For the purposes of this subsection, "health professional" means any certified substance abuse counselor, clinical psychologist, ~~licensed~~ *applied* psychologist, ~~licensed~~ school psychologist, dentist, licensed professional counselor, optometrist, physician, chiropractor, podiatrist, or veterinarian who is actively engaged in the practice of his profession.

Unless such act, decision, or omission resulted from such health professional's bad faith or malicious intent, any health professional, as defined in this subsection, shall be immune from civil liability for any act, decision or omission resulting from his duties as a member or agent of any entity which functions

primarily (i) to investigate any complaint that a physical or mental impairment, including alcoholism or drug addiction, has impaired the ability of any such health professional to practice his profession and (ii) to encourage, recommend and arrange for a course of treatment, if deemed appropriate, or (iii) to review the duration of patient stays in health facilities or delivery of professional services for the purpose of promoting the most efficient use of available health facilities and services, the adequacy and quality of professional services, or the reasonableness or appropriateness of charges made by or on behalf of such health professionals. Such entity shall have been established pursuant to a federal or state law, or by one or more public or licensed private hospitals, or a relevant health professional society, academy or association affiliated with the American Medical Association, the American Dental Association, the American Pharmaceutical Association, the American Psychological Association, the American Podiatric Medical Association, the American Society of Hospitals and Pharmacies, the American Veterinary Medical Association, the American Association for Counseling and Development, the American Optometric Association, International Chiropractic Association, the American Chiropractic Association or a governmental agency.

B. Unless such act, decision, or omission resulted from such pharmacist's or nurse's bad faith or malicious intent, any licensed pharmacist or nurse who is actively engaged in the practice of his profession shall be immune from civil liability for any act, decision or omission resulting from his duties while serving as a member or agent of any entity which functions primarily (i) to investigate any complaint that a physical or mental impairment, including alcoholism or drug addiction, has impaired the ability of any pharmacist or nurse to practice his profession and (ii) to encourage, recommend and arrange for a course of treatment, if deemed appropriate.

C. For the purposes of this subsection, "health profession student" means a student in good standing who is enrolled in an accredited school, program, or curriculum in clinical psychology, dentistry, medicine, nursing, pharmacy, chiropractic, substance abuse counseling, or veterinary medicine and has received training relating to substance abuse.

Unless such act, decision, or omission resulted from such health profession student's bad faith or malicious intent, any health profession student, as defined in this subsection, shall be immune from civil liability for any act, decision, or omission resulting from his duties as a member of an entity established by the institution of higher education in which he is enrolled or a professional student's organization affiliated with such institution which functions primarily (i) to investigate any complaint of a physical or mental impairment, including alcoholism or drug addiction, of any health profession student and (ii) to encourage, recommend, and arrange for a course of treatment, if deemed appropriate.

D. The immunity provided hereunder shall not extend to any person with respect to actions, decisions or omissions, liability for which is limited under the provisions of the federal Social Security Act or amendments thereto.

§ 8.01-581.19. Civil immunity for physicians, psychologists, podiatrists, optometrists, veterinarians and nursing home administrators while members of certain committees.

A. Any physician, chiropractor, ~~clinical~~ psychologist, podiatrist, veterinarian or optometrist licensed to practice in this Commonwealth shall be immune from civil liability for any communication, finding, opinion or conclusion made in performance of his duties while serving as a member of any committee, board, group, commission or other entity that is responsible for resolving questions concerning the admission of any physician, ~~clinical~~ psychologist, podiatrist, veterinarian or optometrist to, or the taking of disciplinary action against any member of, any medical society, academy or association affiliated with the American Medical Association, the Virginia Academy of Clinical Psychologists ~~or~~, the American Psychological Association, *the Virginia Applied Psychology Academy*, *the Virginia Academy of School Psychologists*, the American Podiatric Medical Association, the American Veterinary Medical Association, the International Chiropractic Association, the American Chiropractic Association, the Virginia Chiropractic Association, or the American Optometric Association; provided that such communication, finding, opinion or conclusion is not made in bad faith or with malicious intent.

B. Any nursing home administrator licensed under the laws of this Commonwealth shall be immune from civil liability for any communication, finding, opinion, decision or conclusion made in performance of his duties while serving as a member of any committee, board, group, commission or other entity that is responsible for resolving questions concerning the admission of any health care facility to, or the taking of disciplinary action against any member of, the Virginia Health Care Association, provided that such communication, finding, opinion, decision or conclusion is not made in bad faith or with malicious intent.

§ 8.01-581.19:1. Civil immunity for persons providing information to certain committees.

Any person who provides information to any committee, board, group, commission, or other entity which is authorized to investigate any complaint of physical or mental impairment, that may show that any practitioner of medicine, osteopathy, optometry, chiropractic, podiatry, clinical psychology, physical therapy, veterinary medicine or any physical therapist assistant is unable to practice his profession with reasonable skill and safety, by reason of the use of alcohol, drugs, or other substances, or as a result of any mental or physical condition, shall be immune from civil liability for any act done for, or any utterance or communication made to, such entity in the course of providing such information. However,

this section shall not apply if the act, utterance, or communication is done or made in bad faith or with malicious intent or if such disclosure is prohibited by federal law or regulations promulgated thereunder.

The provisions of this section shall apply only to such entities described in this section as are (i) established pursuant to a federal or state law, (ii) established and duly constituted by one or more public or licensed private hospitals, (iii) a medical or chiropractic society that is operating its health care provider impairment program in cooperation with the Board of Medicine, or another governmental agency, (iv) an optometric society or association that is operating its optometric impairment program in cooperation with the Virginia Board of Optometry, (v) a veterinary medical association that is operating its veterinarian impairment program in cooperation with the Virginia Board of Veterinary Medicine, or (vi) a clinical psychology academy that is operating its clinical psychology impairment program in cooperation with the Board of ~~Medicine~~ *Psychology*.

§ 19.2-169.5. Evaluation of sanity at the time of the offense; disclosure of evaluation results.

A. Raising issue of sanity at the time of offense; appointment of evaluators. If, at any time before trial, the court finds, upon hearing evidence or representations of counsel for the defendant, that there is probable cause to believe that the defendant's sanity will be a significant factor in his defense and that the defendant is financially unable to pay for expert assistance, the court shall appoint one or more qualified mental health experts to evaluate the defendant's sanity at the time of the offense and, where appropriate, to assist in the development of an insanity defense. Such mental health expert shall be (i) a psychiatrist, a ~~licensed clinical psychologist, a licensed psychologist registered with the Board of Psychology with a specialty in clinical services,~~ or an individual with a doctorate degree in clinical psychology who has successfully completed forensic evaluation training as approved by the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services and (ii) qualified by specialized training and experience to perform forensic evaluations. The defendant shall not be entitled to a mental health expert of his own choosing or to funds to employ such expert.

B. Location of evaluation. The evaluation shall be performed on an outpatient basis, at a mental health facility or in jail, unless the court specifically finds that outpatient services are unavailable, or unless the results of the outpatient evaluation indicate that hospitalization of the defendant for further evaluation of his sanity at the time of the offense is necessary. If either finding is made, the court, under authority of this subsection, may order that the defendant be sent to a hospital designated by the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services as appropriate for evaluation of the defendant under criminal charge. The defendant shall be hospitalized for such time as the director of the hospital deems necessary to perform an adequate evaluation of the defendant's sanity at the time of the offense, but not to exceed thirty days from the date of admission to the hospital.

C. Provision of information to evaluators. The court shall require the party making the motion for the evaluation, and such other parties as the court deems appropriate, to provide to the evaluators appointed under subsection A any information relevant to the evaluation, including, but not limited to (i) copy of the warrant or indictment; (ii) the names and addresses of the attorney for the Commonwealth, the attorney for the defendant and the judge who appointed the expert; (iii) information pertaining to the alleged crime, including statements by the defendant made to the police and transcripts of preliminary hearings, if any; (iv) a summary of the reasons for the evaluation request; (v) any available psychiatric, psychological, medical or social records that are deemed relevant; and (vi) a copy of the defendant's criminal record, to the extent reasonably available.

D. The report. The evaluators shall prepare a full report concerning the defendant's sanity at the time of the offense, including whether he may have had a significant mental disease or defect which rendered him insane at the time of the offense. The report shall be prepared within the time period designated by the court, said period to include the time necessary to obtain and evaluate the information specified in subsection C.

E. Disclosure of evaluation results. The report described in subsection D shall be sent solely to the attorney for the defendant and shall be deemed to be protected by the lawyer-client privilege. However, the Commonwealth shall be given the report, the results of any other evaluation of the defendant's sanity at the time of the offense, and copies of psychiatric, psychological, medical, or other records obtained during the course of any such evaluation, after the attorney for the defendant gives notice of an intent to present psychiatric or psychological evidence pursuant to § 19.2-168.

§ 19.2-182.2. Verdict of acquittal by reason of insanity to state the fact; temporary custody and evaluation.

When the defense is insanity of the defendant at the time the offense was committed, the jurors shall be instructed, if they acquit him on that ground, to state the fact with their verdict. The court shall place the person so acquitted ("the acquittee") in temporary custody of the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services (hereinafter referred to in this chapter as the "Commissioner") for evaluation as to whether the acquittee may be released with or without conditions or requires commitment. The evaluation shall be conducted by (i) one psychiatrist and (ii) one ~~licensed clinical psychologist or licensed psychologist registered with the Board of Psychology with a specialty in clinical services.~~ The psychiatrist or *clinical* psychologist shall be skilled in the diagnosis of mental illness and mental retardation and qualified by training and experience to perform such evaluations. The

Commissioner shall appoint both evaluators, at least one of whom shall not be employed by the hospital in which the acquittee is primarily confined. The evaluators shall determine whether the acquittee is currently mentally ill or mentally retarded and shall assess the acquittee and report on his condition and need for hospitalization with respect to the factors set forth in § 19.2-182.3. The evaluators shall conduct their examinations and report their findings separately within forty-five days of the Commissioner's assumption of custody. Copies of the report shall be sent to the acquittee's attorney, the attorney for the Commonwealth for the jurisdiction where the person was acquitted and the community services board serving the locality where the acquittee was acquitted. If either evaluator recommends conditional release or release without conditions of the acquittee, the court shall extend the evaluation period to permit the hospital in which the acquittee is confined and the appropriate community services board to jointly prepare a conditional release or discharge plan, as applicable, prior to the hearing.

§ 19.2-182.5. Review of continuation of confinement hearing; procedure and reports; disposition.

A. The committing court shall conduct a hearing twelve months after the date of commitment to assess each confined acquittee's need for inpatient hospitalization. A hearing for assessment shall be conducted at yearly intervals for five years and at biennial intervals thereafter. The court shall schedule the matter for hearing as soon as possible after it becomes due, giving the matter priority over all pending matters before the court.

B. Prior to the hearing, the Commissioner shall provide to the court a report evaluating the acquittee's condition and recommending treatment, to be prepared by a psychiatrist or a psychologist. The psychologist who prepares the report shall be ~~qualified as a licensed clinical psychologist or licensed psychologist registered with the Board of Psychology with a specialty in clinical services~~, and any evaluating psychiatrist or *clinical* psychologist shall be skilled in the diagnosis of mental illness and qualified by training and experience to perform forensic evaluations. If the examiner recommends release or the acquittee requests release, the acquittee's condition and need for inpatient hospitalization shall be evaluated by a second person with such credentials who is not currently treating the acquittee. A copy of any report submitted pursuant to this subsection shall be sent to the attorney for the Commonwealth for the jurisdiction from which the acquittee was committed.

C. The acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses at the hearing. Written notice of the hearing shall be provided to the attorney for the Commonwealth for the committing jurisdiction. The hearing is a civil proceeding.

According to the determination of the court following the hearing, and based upon the report and other evidence provided at the hearing, the court shall (i) release the acquittee from confinement if he does not need inpatient hospitalization and does not meet the criteria for conditional release set forth in § 19.2-182.7, provided the court has approved a discharge plan prepared jointly by the hospital staff and the appropriate community services board; (ii) place the acquittee on conditional release if he meets the criteria for conditional release, and the court has approved a conditional release plan prepared jointly by the hospital staff and the appropriate community services board; or (iii) order that he remain in the custody of the Commissioner if he continues to require inpatient hospitalization based on consideration of the factors set forth in § 19.2-182.3.

§ 19.2-182.8. Revocation of conditional release.

If at any time the court which released an acquittee pursuant to § 19.2-182.7 finds reasonable ground to believe that an acquittee on conditional release (i) has violated the conditions of his release or is no longer a proper subject for conditional release based on application of the criteria for conditional release and (ii) requires inpatient hospitalization, it may order an evaluation of the acquittee by a psychiatrist, ~~licensed or clinical psychologist, or licensed psychologist registered with the Board of Psychology with a specialty in clinical services~~, provided the psychiatrist or *clinical* psychologist is qualified by training and experience to perform forensic evaluations. If the court, based on the evaluation and after hearing evidence on the issue, finds by a preponderance of the evidence that an acquittee on conditional release (i) has violated the conditions of his release or is no longer a proper subject for conditional release based on application of the criteria for conditional release and (ii) is mentally ill or mentally retarded and requires inpatient hospitalization, the court may revoke the acquittee's conditional release and order him returned to the custody of the Commissioner.

At any hearing pursuant to this section, the acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses at the hearing. Written notice of the hearing shall be provided to the attorney for the Commonwealth for the committing jurisdiction. The hearing is a civil proceeding.

§ 19.2-182.9. Emergency custody of conditionally released acquittee.

When exigent circumstances do not permit compliance with revocation procedures set forth in § 19.2-182.8, any judge as defined in § 37.1-1 or a magistrate may issue an emergency custody order, upon the sworn petition of any responsible person or upon his own motion based upon probable cause to believe that an acquittee on conditional release (i) has violated the conditions of his release or is no

longer a proper subject for conditional release and (ii) requires inpatient hospitalization. The emergency custody order shall require the acquittee within his judicial district to be taken into custody and transported to a convenient location where a person designated by the community services board who is skilled in the diagnosis and treatment of mental illness shall evaluate such acquittee and assess his need for inpatient hospitalization. A law-enforcement officer who, based on his observation or the reliable reports of others, has probable cause to believe that any acquittee on conditional release has violated the conditions of his release and is no longer a proper subject for conditional release and requires emergency evaluation to assess the need for inpatient hospitalization, may take the acquittee into custody and transport him to an appropriate location to assess the need for hospitalization without prior judicial authorization. The evaluation shall be conducted immediately. The acquittee shall remain in custody until a temporary detention order is issued or until he is released, but in no event shall the period of custody exceed four hours. If it appears from all evidence readily available (i) that the acquittee has violated the conditions of his release or is no longer a proper subject for conditional release and (ii) that he requires emergency evaluation to assess the need for inpatient hospitalization, the judge as defined in § 37.1-1, or magistrate upon the advice of such person skilled in the diagnosis and treatment of mental illness, may issue an order of temporary detention authorizing the executing officer to place the acquittee in an appropriate institution for a period not to exceed forty-eight hours prior to a hearing. If the forty-eight-hour period terminates on a Saturday, Sunday or legal holiday, the acquittee may be detained until the next day which is not a Saturday, Sunday or legal holiday, but in no event may he be detained for longer than seventy-two hours or ninety-six hours when the legal holiday occurs on a Monday or Friday. For purposes of this section, a Saturday, Sunday or legal holiday shall be deemed to include the time period up to 8 a.m. of the next day which is not a Saturday, Sunday or legal holiday.

The committing court or any judge as defined in § 37.1-1 shall have jurisdiction to hear the matter. Prior to the hearing, the acquittee shall be examined by a psychiatrist, *or* licensed clinical psychologist, ~~or licensed psychologist registered with the Board of Psychology with a specialty in clinical services,~~ provided the psychiatrist or *clinical* psychologist is skilled in the diagnosis of mental illness, who shall certify whether the person is in need of hospitalization. At the hearing the acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses at the hearing. Following the hearing, if the court determines, based on a preponderance of the evidence presented at the hearing, that the acquittee (i) has violated the conditions of his release or is no longer a proper subject for conditional release and (ii) is mentally ill or mentally retarded and is in need of inpatient hospitalization, the court shall revoke the acquittee's conditional release and place him in the custody of the Commissioner. When an acquittee on conditional release pursuant to this chapter is taken into emergency custody, detained or hospitalized, such action shall be considered to have been taken pursuant to this section, notwithstanding the fact that his status as an insanity acquittee was not known at the time of custody, detention or hospitalization. Detention or hospitalization of an acquittee pursuant to provisions of law other than those applicable to insanity acquittees pursuant to this chapter shall not render the detention or hospitalization invalid. If a person's status as an insanity acquittee on conditional release is not recognized at the time of emergency custody or detention, at the time his status as such is verified, the provisions applicable to such persons shall be applied and the court hearing the matter shall notify the committing court of the proceedings.

§ 19.2-264.3:1. Expert assistance when defendant's mental condition relevant to capital sentencing.

A. Upon (i) motion of the attorney for a defendant charged with or convicted of capital murder and (ii) a finding by the court that the defendant is financially unable to pay for expert assistance, the court shall appoint one or more qualified mental health experts to evaluate the defendant and to assist the defense in the preparation and presentation of information concerning the defendant's history, character, or mental condition, including (i) whether the defendant acted under extreme mental or emotional disturbance at the time of the offense; (ii) whether the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was significantly impaired at the time of the offense; and (iii) whether there are any other factors in mitigation relating to the history or character of the defendant or the defendant's mental condition at the time of the offense. The mental health expert appointed pursuant to this section shall be (i) a psychiatrist, a ~~licensed~~ clinical psychologist, ~~a licensed psychologist registered with the Board of Psychology with a specialty in clinical services,~~ or an individual with a doctorate degree in clinical psychology who has successfully completed forensic evaluation training as approved by the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services and (ii) qualified by specialized training and experience to perform forensic evaluations. The defendant shall not be entitled to a mental health expert of the defendant's own choosing or to funds to employ such expert.

B. Evaluations performed pursuant to subsection A may be combined with evaluations performed pursuant to § 19.2-169.5 and shall be governed by subsections B and C of § 19.2-169.5.

C. The expert appointed pursuant to subsection A shall submit to the attorney for the defendant a report concerning the history and character of the defendant and the defendant's mental condition at the time of the offense. The report shall include the expert's opinion as to (i) whether the defendant acted

under extreme mental or emotional disturbance at the time of the offense, (ii) whether the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was significantly impaired, and (iii) whether there are any other factors in mitigation relating to the history or character of the defendant or the defendant's mental condition at the time of the offense.

D. The report described in subsection C shall be sent solely to the attorney for the defendant and shall be protected by the attorney-client privilege. However, the Commonwealth shall be given the report and the results of any other evaluation of the defendant's mental condition conducted relative to the sentencing proceeding and copies of psychiatric, psychological, medical or other records obtained during the course of such evaluation, after the attorney for the defendant gives notice of an intent to present psychiatric or psychological evidence in mitigation pursuant to subsection E.

E. In any case in which a defendant charged with capital murder intends, in the event of conviction, to present testimony of an expert witness to support a claim in mitigation relating to the defendant's history, character or mental condition, he or his attorney shall give notice in writing to the attorney for the Commonwealth, at least twenty-one days before trial, of his intention to present such testimony. In the event that such notice is not given and the defendant tenders testimony by an expert witness at the sentencing phase of the trial, then the court may, in its discretion, upon objection of the Commonwealth, either allow the Commonwealth a continuance or, under appropriate circumstances, bar the defendant from presenting such evidence.

F. 1. If the attorney for the defendant gives notice pursuant to subsection E and the Commonwealth thereafter seeks an evaluation concerning the existence or absence of mitigating circumstances relating to the defendant's mental condition at the time of the offense, the court shall appoint one or more qualified experts to perform such an evaluation. The court shall order the defendant to submit to such an evaluation, and advise the defendant on the record in court that a refusal to cooperate with the Commonwealth's expert could result in exclusion of the defendant's expert evidence. The qualification of the experts shall be governed by subsection A. The location of the evaluation shall be governed by subsection B of § 19.2-169.5. The attorney for the Commonwealth shall be responsible for providing the experts the information specified in subsection C of § 19.2-169.5. After performing their evaluation, the experts shall report their findings and opinions and provide copies of psychiatric, psychological, medical or other records obtained during the course of the evaluation to the attorneys for the Commonwealth and the defense.

2. If the court finds, after hearing evidence presented by the parties, out of the presence of the jury, that the defendant has refused to cooperate with an evaluation requested by the Commonwealth, the court may admit evidence of such refusal or, in the discretion of the court, bar the defendant from presenting his expert evidence.

G. No statement or disclosure by the defendant made during a competency evaluation performed pursuant to § 19.2-169.1, an evaluation performed pursuant to § 19.2-169.5 to determine sanity at the time of the offense, treatment provided pursuant to § 19.2-169.2 or § 19.2-169.6 or a capital sentencing evaluation performed pursuant to this section, and no evidence derived from any such statements or disclosures may be introduced against the defendant at the sentencing phase of a capital murder trial for the purpose of proving the aggravating circumstances specified in § 19.2-264.4. Such statements or disclosures shall be admissible in rebuttal only when relevant to issues in mitigation raised by the defense.

§ 32.1-135.2. Offer or payment of remuneration in exchange for referral prohibited.

No hospital licensed pursuant to this chapter shall knowingly and willfully offer or pay any remuneration directly or indirectly, in cash or in kind, to induce any practitioner of the healing arts *or any clinical psychologist* to refer an individual or individuals to such hospital. The Board shall adopt regulations as necessary to carry out the provisions of this section. Such regulations shall be developed in conjunction with the State Mental Health, Mental Retardation and Substance Abuse Services Board and shall be consistent with regulations adopted by such Board pursuant to § 37.1-186.1. Such regulations shall exclude from the definition of "remuneration" any payments, business arrangements, or payment practices not prohibited by Title 42, Section 1320a-7b (b) of the United States Code, as amended, or any regulations promulgated pursuant thereto.

§ 37.1-186.1. Offer or payment of remuneration in exchange for referral prohibited.

No facility or institution licensed pursuant to this chapter shall knowingly and willfully offer or pay any remuneration directly or indirectly, in cash or in kind, to induce any practitioner of the healing arts *or any clinical psychologist* to refer an individual or individuals to such facility or institution. The Board shall adopt regulations as necessary to carry out the provisions of this section. Such regulations shall be developed in conjunction with the State Board of Health and shall be consistent with regulations adopted by such Board pursuant to § 32.1-135.2. Such regulations shall exclude from the definition of "remuneration" any payments, business arrangements, or payment practices not prohibited by Title 42, Section 1320a-7b (b) of the United States Code, as amended, or any regulations promulgated pursuant thereto.

§ 54.1-2900. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Acupuncturist" means individuals approved by the Board to practice acupuncture. This is limited to "licensed acupuncturist" which means an individual other than a doctor of medicine, osteopathy or podiatry, who has successfully completed the requirements for licensure established by the Board (approved titles are limited to: Licensed Acupuncturist, Lic.Ac., L.Ac.) and "physician acupuncturist" which means doctors of medicine, osteopathy and podiatry who have fulfilled the physician requirements for licensure to practice acupuncture established by the Board.

"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 an approved chemical dependency treatment program, under the appropriate supervision of a licensed physician acupuncturist or licensed acupuncturist.

"Board" means the Board of Medicine.

"Certified optometrist" means an optometrist who is licensed under Chapter 32 of this title and who has successfully completed the requirements for certification established by the Board of Medicine. Such certification shall enable an optometrist to treat certain diseases, including abnormal conditions, of the human eye and its adnexa, as specified by the Board of Medicine, with certain therapeutic pharmaceutical agents specified by the Board. However, such certification shall not permit treatment through surgery or other invasive modalities.

"Clinical psychologist" means a psychologist who is competent in the diagnosis, prevention, treatment and amelioration of psychological problems, behavioral or emotional disorders or conditions or mental conditions, by the application of psychological principles, psychological methods, or psychological procedures, including but not limited to psychological assessment and evaluation and psychotherapy, which does not amount to the practice of medicine. This definition shall not be construed to limit or restrict any person licensed by a health regulatory board as defined in § 54.1-2500 from rendering services which he is licensed to provide.

"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.

"Practice of acupuncture" means the stimulation of certain points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain ailments or conditions of the body and includes the techniques of electroacupuncture, cupping and moxabustion. The practice of acupuncture does not include the use of physical therapy, chiropractic, osteopathic manipulative techniques, the use or prescribing of any drugs, medications, herbal preparations, nutritional supplements, serums or vaccines, nor the procedure of auricular acupuncture as exempted in § 54.1-2901 when used specifically and exclusively in the context of a publicly supported comprehensive drug treatment program by an employee of the program who is trained and approved by the National Acupuncture Detoxification Association.

"Practice of chiropractic" means the adjustment of the twenty-four movable vertebrae of the spinal column, and assisting nature for the purpose of normalizing the transmission of nerve energy, but does not include the use of surgery, obstetrics, osteopathy or the administration or prescribing of any drugs, medicines, serums or vaccines.

"Practice of clinical psychology" means the offering by an individual of his services to the public as a clinical psychologist.

"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 physical therapy" means, upon medical referral and direction, the evaluation, testing, treatment, reeducation and rehabilitation by physical, mechanical or electronic measures and procedures of individuals who, because of trauma, disease or birth defect, present physical and emotional disorders, but does not include the use of Roentgen rays and radium for diagnostic or therapeutic purposes or the use of electricity for shock therapy and surgical purposes including cauterization.

"Practice of podiatry" means the medical, mechanical and surgical treatment of the ailments of the human foot and ankle, but does not include amputation proximal to the metatarsal-phalangeal joints. 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.

§ 54.1-2900. (Effective January 1, 1997) Definitions.

As used in this chapter, unless the context requires a different meaning:

"Acupuncturist" means individuals approved by the Board to practice acupuncture. This is limited to "licensed acupuncturist" which means an individual other than a doctor of medicine, osteopathy or podiatry, who has successfully completed the requirements for licensure established by the Board (approved titles are limited to: Licensed Acupuncturist, Lic.Ac., L.Ac.) and "physician acupuncturist" which means doctors of medicine, osteopathy and podiatry who have fulfilled the physician requirements for licensure to practice acupuncture established by the Board.

"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 an approved chemical dependency treatment program, under the appropriate supervision of a licensed physician acupuncturist or licensed acupuncturist.

"Board" means the Board of Medicine.

"Certified optometrist" means an optometrist who is licensed under Chapter 32 (§ 54.1-3200 et seq.) of this title and who has successfully completed the requirements for certification established by the Board of Medicine. Such certification shall enable an optometrist to treat certain diseases, including abnormal conditions, of the human eye and its adnexa, as specified by the Board of Medicine, with certain therapeutic pharmaceutical agents specified by the Board. However, such certification shall not permit treatment through surgery or other invasive modalities.

~~"Clinical psychologist" means a psychologist who is competent in the diagnosis, prevention, treatment and amelioration of psychological problems, behavioral or emotional disorders or conditions or mental conditions, by the application of psychological principles, psychological methods, or psychological procedures, including but not limited to psychological assessment and evaluation and psychotherapy, which does not amount to the practice of medicine. This definition shall not be construed to limit or restrict any person licensed by a health regulatory board as defined in § 54.1-2500 from rendering services which he is licensed to provide.~~

"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.

"Practice of acupuncture" means the stimulation of certain points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain ailments or conditions of the body and includes the techniques of electroacupuncture, cupping and moxabustion. The practice of acupuncture does not include the use of physical therapy, chiropractic, osteopathic manipulative techniques, the use or prescribing of any drugs, medications, herbal preparations, nutritional supplements, serums or vaccines, nor the procedure of auricular acupuncture as exempted in § 54.1-2901 when used specifically and exclusively in the context of a publicly supported comprehensive drug treatment program by an employee of the program who is trained and approved by the National Acupuncture Detoxification Association.

"Practice of chiropractic" means the adjustment of the twenty-four movable vertebrae of the spinal column, and assisting nature for the purpose of normalizing the transmission of nerve energy, but does not include the use of surgery, obstetrics, osteopathy or the administration or prescribing of any drugs, medicines, serums or vaccines.

~~"Practice of clinical psychology" means the offering by an individual of his services to the public as a clinical psychologist.~~

"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 physical therapy" means, upon medical referral and direction, the evaluation, testing, treatment, reeducation and rehabilitation by physical, mechanical or electronic measures and procedures of individuals who, because of trauma, disease or birth defect, present physical and emotional disorders, but does not include the use of Roentgen rays and radium for diagnostic or therapeutic purposes or the use of electricity for shock therapy and surgical purposes including cauterization.

"Practice of podiatry" means the medical, mechanical and surgical treatment of the ailments of the human foot and ankle, but does not include amputation proximal to the metatarsal-phalangeal joints. 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 x-rays to human beings for diagnostic or therapeutic purposes.

"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.) of this title, who (i) performs, may be called upon to perform, or who is licensed to perform a comprehensive scope of diagnostic radiologic procedures employing equipment which emits 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 or other procedures which contribute to any significant extent to the site or dosage of ionizing radiation to which a patient is exposed.

"Radiologic technologist, limited" means an individual, other than a licensed radiologic technologist, dental hygienist or who is otherwise authorized by the Board of Dentistry under Chapter 27 of this title and the regulations pursuant thereto, who performs diagnostic radiographic procedures employing equipment which emits ionizing radiation which is limited to specific areas of the human body.

§ 54.1-2901. Exceptions and exemptions generally.

The provisions of this chapter shall not prevent or prohibit:

1. Any person entitled to practice his profession under any prior law on June 24, 1944, from continuing such practice within the scope of the definition of his particular school of practice;
2. Any person licensed to practice naturopathy prior to June 30, 1980, from continuing such practice

in accordance with regulations promulgated by the Board;

3. Any licensed nurse practitioner from rendering care under the supervision of a duly licensed physician when such services are authorized by regulations promulgated jointly by the Board of Medicine and the Board of Nursing;

4. Any registered professional nurse, registered midwife, licensed nurse practitioner, graduate laboratory technician or other technical personnel who have been properly trained from rendering care or services within the scope of their usual professional activities which shall include the taking of blood, the giving of intravenous infusions and intravenous injections, and the insertion of tubes when performed under the orders of a person licensed to practice medicine;

5. Any dentist, pharmacist or optometrist from rendering care or services within the scope of his usual professional activities;

6. Any practitioner licensed or certified by the Board from delegating to personnel in his personal employ and supervised by him, such activities or functions as are nondiscretionary and do not require the exercise of professional judgment for their performance and which are usually or customarily delegated to such persons by practitioners of the healing arts, if such activities or functions are authorized by and performed for such practitioners of the healing arts and responsibility for such activities or functions is assumed by such practitioners of the healing arts;

7. The rendering of medical advice or information through telecommunications from a physician licensed to practice medicine in Virginia or an adjoining state to emergency medical personnel acting in an emergency situation;

8. The domestic administration of family remedies;

9. The giving or use of massages, steam baths, dry heat rooms, infrared heat or ultraviolet lamps in public or private health clubs and spas;

10. The manufacture or sale of proprietary medicines in this Commonwealth by licensed pharmacists or druggists;

11. The advertising or sale of commercial appliances or remedies;

12. The fitting by nonitinerant persons or manufacturers of artificial eyes, limbs or other apparatus or appliances or the fitting of plaster cast counterparts of deformed portions of the body by a nonitinerant bracer or prosthetist for the purpose of having a three-dimensional record of the deformity, when such bracer or prosthetist has received a prescription from a licensed physician directing the fitting of such casts and such activities are conducted in conformity with the laws of Virginia;

13. Any person from the rendering of first aid or medical assistance in an emergency in the absence of a person licensed to practice medicine or osteopathy under the provisions of this chapter;

14. The practice of the religious tenets of any church in the ministration to the sick and suffering by mental or spiritual means without the use of any drug or material remedy, whether gratuitously or for compensation;

15. Any legally qualified out-of-state or foreign practitioner from meeting in consultation with legally licensed practitioners in this Commonwealth;

16. Any practitioner of the healing arts licensed or certified and in good standing with the applicable regulatory agency in another state or Canada when that practitioner of the healing arts is in Virginia temporarily and such practitioner has been issued a temporary license or certification by the Board from practicing medicine or the duties of the profession for which he is licensed or certified (i) in a summer camp or in conjunction with patients who are participating in recreational activities, (ii) while participating in continuing educational programs prescribed by the Board, or (iii) by rendering at any site any health care services within the limits of his license, voluntarily and without compensation, to any patient of any clinic which is organized in whole or in part for the delivery of health care services without charge as provided in § 54.1-106;

17. The performance of the duties of any commissioned or contract medical officer, physical therapist, *or* podiatrist, ~~or clinical psychologist~~ in active service in the army, navy, coast guard, marine corps, air force, or public health service of the United States while such individual is so commissioned or serving;

18. Any masseur, who publicly represents himself as such, from performing services within the scope of his usual professional activities and in conformance with state law;

19. Any person from performing services in the lawful conduct of his particular profession or business under state law;

20. Any person from rendering emergency care pursuant to the provisions of § 8.01-225;

21. Qualified emergency medical personnel from following Emergency Medical Services Do Not Resuscitate Orders in accordance with § 54.1-2987.1;

22. Any visiting or home care nurse licensed by the Board of Nursing acting in compliance with the written order of the attending physician not to resuscitate a patient in the event of cardiac or respiratory arrest; ~~or~~

23. Any commissioned or contract medical officer of the army, navy, coast guard or air force rendering services voluntarily and without compensation while deemed to be licensed pursuant to § 54.1-106; *or*

24. Any provider of a chemical dependency treatment program who is certified as an "acupuncture detoxification specialist" by the National Acupuncture Detoxification Association or an equivalent certifying body, from administering auricular acupuncture treatment under the appropriate supervision of a licensed physician acupuncturist or licensed acupuncturist.

§ 54.1-2902. Unlawful to practice without license.

It shall be unlawful for any person to practice medicine, osteopathic medicine, chiropractic, podiatry, physical therapy, ~~clinical psychology~~ or as a physical therapist's, physician's or podiatrist's assistant in the Commonwealth without a valid unrevoked license issued by the Board of Medicine.

§ 54.1-2903. What constitutes practice.

Any person shall be regarded as practicing the healing arts who actually engages in such practice as defined in this chapter, or who opens an office for such purpose, or who advertises or announces to the public in any manner a readiness to practice or who uses in connection with his name the words or letters "Doctor," "Dr.," "M.D.," "D.O.," "D.P.M.," "D.C.," "Healer," "Physical Therapist," "R.P.T.," "P.T.," "L.P.T.A.," ~~"Clinical Psychologist,"~~ or any other title, word, letter or designation intending to designate or imply that he is a practitioner of the healing arts or that he is able to heal, cure or relieve those suffering from any injury, deformity or disease. No person regulated under this chapter shall use the title "Doctor" or the abbreviation "Dr." in writing or in advertising in connection with his practice unless he simultaneously uses a clarifying title, initials, abbreviation or designation or language that identifies the type of practice for which he is licensed.

Signing a birth or death certificate, or signing any statement certifying that the person so signing has rendered professional service to the sick or injured, or signing or issuing a prescription for drugs or other remedial agents, shall be prima facie evidence that the person signing or issuing such writing is practicing the healing arts within the meaning of this chapter except where persons other than physicians are required to sign birth certificates.

§ 54.1-2904. Biennial renewal of licenses; copies; fee; lapsed licenses; reinstatement; penalties.

A. Every license to practice medicine, osteopathy, chiropractic, podiatry, *or* physical therapy; ~~or clinical psychology~~ granted under the provisions of this chapter shall be renewed biennially as prescribed by the Board. The Board shall mail an application for renewal of a license to every licensee. Failure to receive such an application shall not excuse any licensee from the requirements of renewal. The person receiving such application shall furnish the information requested and return the form to the Board with the prescribed renewal fee. Copies of licenses may be obtained as provided in the Board's regulations.

B. Any licensee who allows his license to lapse by failing to renew the license or failing to meet professional activity requirements stipulated in the regulations may be reinstated by the Board upon submission of evidence satisfactory to the Board that he is prepared to resume practice in a competent manner and upon payment of the prescribed fee.

C. Any person practicing medicine, osteopathy, chiropractic, podiatry, *or* physical therapy ~~or clinical psychology~~ during the time his license has lapsed shall be considered an illegal practitioner and shall be subject to the penalties for violation of this chapter.

§ 54.1-2907. Practitioners treating other practitioners for certain disorders to make reports; immunity from liability.

A. Every practitioner ~~of the healing arts~~ in the Commonwealth *licensed or certified by a health regulatory board* who treats professionally any person ~~licensed by the Board of Dentistry, the Board of Medicine, the Board of Nursing, the Board of Pharmacy or the Board of Psychology or certified by a health regulatory board~~ shall, unless exempted by subsection C hereof, report to the appropriate board whenever any such health professional is:

1. treated for mental, ~~emotional or personality~~ disorders, *chemical dependency or alcoholism*, unless the attending practitioner has determined that there is a reasonable probability that the person being treated is competent to continue in practice or would not constitute a danger to himself or to the health and welfare of his patients or the public; ~~or~~.

2. ~~Treated for drug addiction or chronic alcoholism.~~

Any report required by this section shall be in writing directed to the appropriate board, shall give the name and address of the person who is the subject of the report and shall fully describe the circumstances surrounding the facts required to be reported.

B. Any person making a report required by this section 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.

C. Medical records or information learned or maintained in connection with an alcohol or drug abuse prevention function which 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 21 U.S.C. § 1175(a), 42 U.S.C. § 4582(a), 42 U.S.C. § 290dd-2 or regulations promulgated thereunder.

§ 54.1-2908. Reports of disciplinary action against health professionals; immunity from liability.

A. The president of the Medical Society of Virginia, the Osteopathic Medical Association, the

Virginia Chiropractors Association, Inc., the Virginia Academy of Clinical Psychologists, the Virginia Psychological Association (regarding clinical psychologists only), the Virginia Podiatric Medical Association and the Virginia Physical Therapy Association shall report to the Board of Medicine any disciplinary action taken by his organization against any member of his organization licensed under this chapter if such disciplinary action is a result of conduct involving professional ethics, professional incompetence, moral turpitude, drug addiction or alcohol abuse.

B. The president of any association, society, academy or organization shall report to the Board of Medicine any disciplinary action taken against any of its members licensed under this chapter if such disciplinary action is a result of conduct involving professional ethics, professional incompetence, moral turpitude, drug addiction or alcohol abuse.

C. Any report required by this section shall be in writing directed to the Board of Medicine, shall give the name and address of the person who is the subject of the report and shall fully describe the circumstances surrounding the facts required to be reported.

D. Any person making a report required by this section or testifying in a judicial or administrative proceeding as a result of such report shall be immune from any civil liability resulting therefrom unless such person acted in bad faith or with malicious intent.

E. In the event that any organization enumerated in subsection A above or any component thereof receives a complaint against one of its members, such organization may, in lieu of considering disciplinary action against such member, request that the Board investigate the matter pursuant to this chapter, in which event any person participating in the decision to make such a request or testifying in a judicial or administrative proceeding as a result of such request shall be immune from any civil liability alleged to have resulted therefrom unless such person acted in bad faith or with malicious intent.

§ 54.1-2929. Licenses required.

No person shall practice or hold himself out as qualified to practice medicine, osteopathy, chiropractic, or podiatry or clinical psychology without obtaining a license from the Board of Medicine as provided in this chapter.

§ 54.1-2940. License to practice clinical psychology; certification of training.

Upon receipt of an application to practice clinical psychology, with a recommendation from the Board of Psychology that such license be issued, the Board shall, in the absence of good cause to the contrary, issue a license to the applicant. The Board may review any application for licensure, including the credentials of the applicant, and independently determine whether to issue a license to the applicant. Any refusal to issue such license shall be accompanied by a statement in writing of the reason therefor shall appoint a committee which shall consist of five members to be chosen as follows: (i) the clinical psychologist member of the Board who shall serve as the chair of the committee, (ii) two members who shall be appointed by the Board from among its members, and (iii) two members who shall be appointed by the Board from a list submitted by the Virginia Academy of Clinical Psychologists.

The Board of Psychology shall promulgate regulations establishing the requirements for licensure of clinical psychologists. All regulations shall include appropriate emphasis and experience in the diagnosis and treatment of persons with moderate and severe mental disorders. In promulgating these regulations, the Board of Psychology shall collaborate with the committee established in this section.

§ 54.1-3600. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Applied psychologist" means an individual licensed to practice applied psychology.

"Board" means the Board of Psychology.

"Certified sex offender treatment provider" means a person who is certified to provide treatment to sex offenders and who provides such services in accordance with the provisions of §§ 54.1-2924.1, 54.1-3005, 54.1-3505, 54.1-3609, 54.1-3610, 54.1-3611, and 54.1-3705 and the regulations promulgated pursuant to these provisions.

"Clinical psychologist" means a psychologist who is competent in the diagnosis, prevention, treatment and amelioration of psychological problems, behavioral or emotional disorders or conditions or mental conditions, by the application of psychological principles, psychological methods, or psychological procedures including but not limited to psychological assessment and evaluation and psychotherapy, which does not amount to the practice of medicine. This definition shall not be construed to limit or restrict any person licensed by a health regulatory board as defined in § 54.1-2500 from rendering services which they are licensed to provide an individual licensed to practice clinical psychology.

"Practice of applied psychology" means application of the principles and methods of psychology to improvement of organizational function, personnel selection and evaluation, program planning and implementation, individual motivation, development and behavioral adjustment, as well as consultation on teaching and research.

"Practice of clinical psychology" means the offering by an individual of his services to the public as a clinical psychologist includes, but is not limited to:

1. "Testing and measuring" which consists of the psychological evaluation or assessment of personal characteristics such as intelligence, abilities, interests, aptitudes, achievements, motives, personality dynamics, psychoeducational processes, neuropsychological functioning, or other psychological attributes

of individuals or groups.

2. "Diagnosis and treatment of mental and emotional disorders" which consists of the appropriate diagnosis of mental disorders according to standards of the profession and the ordering or providing of treatments according to need. Treatment includes providing counseling, psychotherapy, marital/family therapy, group therapy, behavior therapy, psychoanalysis, hypnosis, biofeedback, and other psychological interventions with the objective of modification of perception, adjustment, attitudes, feelings, values, self-concept, personality or personal goals, the treatment of alcoholism and substance abuse, disorders of habit or conduct, as well as of the psychological aspects of physical illness, pain, injury or disability.

3. "Psychological consulting" which consists of interpreting or reporting on scientific theory or research in psychology, rendering expert psychological or clinical psychological opinion, evaluation, or engaging in applied psychological research, program or organizational development, administration, supervision or evaluation of psychological services.

"Practice of psychology" means the rendering or offering to render to individuals, groups, organizations, or the general public any service involving the application of principles, methods or procedures of the science and profession of psychology, and which includes, but is not limited to:

1. "Measuring and testing," which consists of the psychological assessment and evaluation of abilities, attitudes, aptitudes, achievements, adjustments, motives, personality dynamics or other psychological attributes of individuals, or groups of individuals by means of standardized measurements or other methods, techniques or procedures recognized by the science and profession of psychology.

2. "Counseling and psychotherapy," which consists of the application of principles of learning and motivation in an interpersonal situation with the objectives of modification of perception and adjustment, consisting of highly developed skills, techniques, and methods of altering through learning processes, attitudes, feelings, values, self-concept, personal goals and adaptive patterns.

3. "Psychological consulting," which consists of interpreting or reporting upon scientific fact or theory in psychology, rendering expert psychological opinion, psychological evaluation, or engaging in applied psychological research practice of applied psychology, clinical psychology or school psychology.

The "practice of school psychology" means the rendering or offering to render to individuals, groups, organizations, government agents or the public any of the following services:

1. "Testing and measuring" which consists of psychological assessment, evaluation and diagnosis relative to the assessment of intellectual ability, aptitudes, achievement, adjustment, motivation, personality or any other psychological attribute of persons as individuals or in groups that directly relates to learning or behavioral problems in an educational setting that impact education.

2. "Counseling" which consists of professional advisement and interpretive services with children or adults for amelioration or prevention of educationally related problems problems that impact education.

Counseling services relative to the practice of school psychology include but are not limited to the procedures of verbal interaction, interviewing, behavior modification, environmental manipulation and group processes.

Counseling services relative to the practice of school psychology are short-term and are situation oriented.

3. "Consultation" which consists of educational or vocational consultation or direct educational services to schools, agencies, organizations or individuals. Consultation Psychological consulting as herein defined is directly related to learning problems and related adjustments.

4. Development of programs such as designing more efficient and psychologically sound classroom situations and acting as a catalyst for teacher involvement in adaptations and innovations.

"Psychologist" means a person trained in the application of established principles of learning, motivation, perception, thinking and emotional relationships to problems of personality evaluation, group relations, and behavior adjustment licensed to practice school, applied or clinical psychology.

"School psychologist" means a person who specializes in problems manifested in and associated with educational systems and who utilizes psychological concepts and methods in programs or actions which attempt to improve learning conditions for students or who is employed in this capacity by a public or nonprofit educational institution or who offers to render such services to the public whether or not employed by such an institution licensed by the Board of Psychology to practice school psychology.

§ 54.1-3601. Exemption from requirements of licensure.

The requirements for licensure provided for in this chapter shall not be applicable to:

1. Persons who render services that are like or similar to those falling within the scope of the classifications or categories in this chapter, so long as the recipients or beneficiaries of such services are not subject to any charge or fee, or any financial requirement, actual or implied, and the person rendering such service is not held out, by himself or otherwise, as a licensed practitioner or a provider of clinical or school psychology services.

2. The activities or services of a student pursuing a course of study in psychology or school psychology in an institution accredited by an accrediting agency recognized by the Board or under the supervision of a practitioner licensed or certified under this chapter, if such activities or services constitute a part of his course of study and are adequately supervised.

3. The activities of rabbis, priests, ministers or clergymen of any religious denomination or sect when such activities are within the scope of the performance of their regular or specialized ministerial duties, and no separate charge is made or when such activities are performed, whether with or without charge, for or under auspices or sponsorship, individually or in conjunction with others, of an established and legally cognizable church, denomination or sect, and the person rendering service remains accountable to its established authority.

4. Persons employed as salaried employees or volunteers of the federal government, the Commonwealth, a locality, or of any agency established or funded, in whole or part, by any such governmental entity or of a private, nonprofit organization or agency sponsored or funded, in whole or part, by a community-based citizen group or organization, except that any such person who renders psychological services, as defined in this chapter, shall be (i) supervised by a licensed psychologist or clinical psychologist; (ii) ~~certified~~ *licensed* by the Department of Education as a school psychologist; or (iii) employed by a school for students with disabilities which is certified by the Board of Education. Any person who, in addition to the above enumerated employment, engages in an independent private practice shall not be exempt from the licensure requirements.

5. Persons regularly employed by private business firms as personnel managers, deputies or assistants so long as their counseling activities relate only to employees of their employer and in respect to their employment.

6. *Any psychologist holding a license or certificate in another state, the District of Columbia, or United States territory or foreign jurisdiction consulting with licensed psychologists in this Commonwealth.*

7. *Any psychologist holding a license or certificate in another state, the District of Columbia, or United States territory or foreign jurisdiction when in Virginia temporarily and such psychologist has been issued a temporary license by the Board to participate in continuing education programs or rendering psychological services without compensation to any patient of any clinic which is organized in whole or in part for the delivery of health care services without charge as provided in § 54.1-106.*

8. *The performance of the duties of any commissioned or contract clinical psychologist in active service in the army, navy, coast guard, marine corps, air force, or public health service of the United States while such individual is so commissioned or serving.*

9. *Any person from performing services in the lawful conduct of his particular profession or business under state law.*

§ 54.1-3603. Board of Psychology; membership.

The Board of Psychology shall regulate the practice of psychology ~~and school psychology~~. The membership of the Board shall be representative of the practices of psychology and shall consist of ~~seven~~ *nine* members as follows: ~~two~~ *five* persons who are licensed as psychologists and also licensed by the Board of Medicine as clinical psychologists, one person licensed as a school psychologist, one person licensed as a *an applied* psychologist who specializes in counseling psychology, ~~one other person licensed as a psychologist~~, and two citizen members. At least one of the ~~five professional~~ *seven* psychologist members of the Board shall be a member of the faculty at an accredited college or university in this Commonwealth actively engaged in teaching psychology. The terms of the members of the Board shall be four years.

§ 54.1-3604. Nominations.

Nominations for professional members may be made from a list of at least three names for each vacancy submitted to the Governor by the Virginia Psychological Association, the Virginia Academy of Clinical Psychologists, the Virginia ~~Counseling Psychologists Association~~ *Applied Psychology Academy* and the Virginia ~~Association~~ *Academy* of School Psychologists. The Governor may notify such organizations of any professional vacancy other than by expiration. In no case shall the Governor be bound to make any appointment from among the nominees.

§ 54.1-3605. Specific powers and duties of the Board; penalty.

In addition to the powers granted in § 54.1-2400, the Board shall have the following specific powers and duties:

1. To cooperate with and maintain a close liaison with other professional boards and the community to ensure that regulatory systems stay abreast of community and professional needs.
2. To conduct inspections to ensure that licensees conduct their practices in a competent manner and in conformance with the relevant regulations.

3. To designate specialties within the profession.

4. To issue a temporary license *for such periods as the Board may prescribe* to practice psychology to persons who are engaged in a residency or pursuant to subdivision 7 of § 54.1-3601.

5. (Effective until July 1, 1999) To promulgate regulations for the voluntary certification of licensees as sex offender treatment providers. In promulgating such regulations, the Board shall consider the standards recommended by the Advisory Committee on Certified Practices pursuant to § 54.1-3610. The provisions of this subdivision shall expire on July 1, 1999.

6. (Effective until July 1, 1999) To administer the mandatory certification of sex offender treatment providers for those professionals who are otherwise exempt from licensure under subdivision 4 of

§§ 54.1-3501, 54.1-3601 or § 54.1-3701 and to promulgate regulations governing such mandatory certification. The regulations shall include provisions for fees for application processing, certification qualifications, certification issuance and renewal and disciplinary action. The provisions of this subdivision shall expire on July 1, 1999.

7. *The Board may suspend the license of any person licensed hereunder, without a hearing simultaneously with the institution of proceedings for a hearing, if it finds that there is a substantial danger to the public health or safety which warrants this action. The Board may meet by telephone conference call when summarily suspending a license, if a good faith effort to assemble a quorum of the Board has failed and, in the judgment of a majority of the members of the Board, the continued practice of psychology by the practitioner constitutes a substantial danger to the public health or safety. Institution of proceedings for a hearing shall be provided simultaneously with the summary suspension. The hearing shall be scheduled within a reasonable time of the date of the summary suspension.*

§ 54.1-3606. License required.

In order to engage in the practice of *applied* psychology, school psychology, or clinical psychology, it shall be necessary to hold a license.

§ 54.1-3608. License as clinical psychologist.

~~The candidate for licensure as a clinical psychologist shall be recommended after investigation and examination by the Board of Psychology to~~ Any certificate signed by the Board as evidence of licensure as a clinical psychologist shall incorporate a statement indicating that standards of practice and regulations governing licensure requirements have been developed in collaboration with the Board of Medicine for licensure and subsequent regulation.

§ 54.1-3612. Confidentiality of investigative information required.

A. Any reports, information or records received and maintained by the Board in connection with possible disciplinary proceedings, including any material received or developed by the Board during an investigation or hearing, shall be strictly confidential. However, the Board may only disclose any such confidential information:

1. In a disciplinary hearing before the Board or in any subsequent trial or appeal of a Board action or order;

2. To licensing or disciplinary authorities of other jurisdictions, faculty committees at accredited institutions or hospital committees located within or outside this Commonwealth which are concerned with granting, limiting or denying hospital or teaching privileges if a final determination regarding a violation of this chapter has been made;

3. Pursuant to an order of a court of competent jurisdiction; or

4. To qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any patient or psychologist is first deleted and a final determination regarding a violation of this chapter has been made.

B. Orders of the Board relating to disciplinary action against a psychologist are not required to be confidential.

C. In no event shall confidential information received, maintained or developed by the Board, or disclosed by the Board to others, pursuant to this section be available for discovery or court subpoena or introduced into evidence in any medical malpractice suit or other action for damages arising out of the provision of or failure to provide health care services. However, this section shall not be construed to inhibit an investigation or prosecution under Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2.

D. Any person found guilty of the unlawful disclosure of such confidential information possessed by the Board shall be guilty of a Class 1 misdemeanor.

E. Any claim of patient privilege shall not prevail in any investigation or proceeding by the Board acting within the scope of its authority. However, the disclosure of any information pursuant to this provision shall not be deemed a waiver of such privilege in any other proceeding.

F. This section shall not prohibit the Director of the Department of Health Professions, after consultation with the Board president or his designee, from disclosing to the Attorney General or the appropriate attorney for the Commonwealth, investigatory information which indicates a possible violation of any provision of law relating to the manufacture, distribution, dispensing, prescribing or administration of drugs other than drugs classified as Schedule VI drugs and devices by any individual licensed or otherwise regulated by the Board of Psychology.

§ 54.1-3613. Psychological practices audit committee; functions and powers; immunity from civil liability.

A. Whenever restrictions have been placed on the license of a psychologist subsequent to a finding that the practitioner has violated the provisions of this chapter, the Board may appoint a psychological practices audit committee. The audit committee shall review the practice of the disciplined licensee to ascertain whether his practice conforms to the conditions placed on his license by the Board.

B. The committee shall consist of three licensed psychologists. No more than one such practitioner shall have his principal office in the city or county in which the complaint resulting in the disciplinary action arose or the disciplined licensee practices or resides. Such appointments may be made from a list of practitioners who have agreed to serve on such committees. In maintaining the list the Board shall

give due regard to the nature of the practice of the practitioner who is the subject of the disciplinary action. The Board shall designate one member of each committee as chairman. No person appointed to serve on a malpractice review panel shall be eligible to serve on a psychological practices audit committee if in that capacity he has reviewed a claim or investigated a complaint brought against the disciplined licensee.

C. The committee shall have full power, as designee of the Board, to subpoena the person who is the subject of the audit and other witnesses to take evidence and to require the production of any documents, records or other materials which it deems relevant to its review. In case of refusal by any person to obey a subpoena or other order issued by the committee or the Board, a court of record, upon application by the Board, may issue an order requiring the person, under such conditions as it deems just, to appear before the Board or committee, to produce documentary evidence, or to give other evidence concerning the matter under review. Proceedings before an audit committee shall be in accordance with rules established by the committee. Testimony before the committee need not be recorded.

D. A member of an audit committee may be called as a witness in a subsequent hearing before the Board. A member of the psychological practices audit committee shall have immunity from civil liability resulting from any communication, finding, opinion, or conclusion made in the course of his duties as a member of the committee unless such person acted in bad faith or with malicious intent.

§ 54.1-3614. Delegation to unlicensed persons.

Any licensed psychologist may delegate to unlicensed personnel supervised by him such activities or functions as are nondiscretionary and do not require the exercise of professional judgment for their performance and which are usually or customarily delegated to such persons by psychologists, if such activities or functions are authorized by and performed for such psychologist and responsibility for such activities or functions is assumed by such psychologist.

§ 54.1-3615. Physical or mental illness; examination.

The Board may direct any licensee under a disciplinary order to furnish it at such intervals as it may require, evidence that he is not practicing his profession in violation of law or regulation. In addition, when the Board has probable cause to believe the licensee is unable to practice with reasonable skill and safety to patients because of excessive use of alcohol or drugs or physical or mental illness, the Board, after preliminary investigation by informal conference, may direct that the licensee submit to a mental or physical examination by practitioners designated by it. Failure of the licensee to submit to the examination shall constitute grounds for disciplinary action. Any licensee affected by this section shall be afforded reasonable opportunity to demonstrate that he is competent to practice psychology with reasonable skill and safety to clients.

§ 54.1-3616. Use of title "Doctor."

No person regulated under this chapter shall use the title "Doctor" or the abbreviation "Dr." in writing or in advertising in connection with his practice unless he simultaneously uses a clarifying title, initials, abbreviation or designation or language that identifies the type of practice for which he is licensed.

2. That § 54.1-3607 of the Code of Virginia is repealed.

3. That individuals licensed as psychologists with a specialty in clinical services prior to the effective date of this act shall be licensed as clinical psychologists by the Board of Psychology.

4. That individuals licensed as clinical psychologists by the Board of Medicine prior to the effective date of this act shall be licensed as clinical psychologists by the Board of Psychology.

5. That individuals licensed as psychologists prior to the effective date of this act who do not have a specialty in clinical services shall be licensed as applied psychologists by the Board of Psychology.

6. That individuals licensed as school psychologists by the Board of Psychology prior to the effective date of this act who do not have a specialty in clinical services shall continue to be licensed as school psychologists by the Board of Psychology.

7. That all records of the Board of Medicine dealing with licensing of clinical psychologists shall be transferred to the Board of Psychology as determined by the Director of the Department of Health Professions.

8. That regulations promulgated by the Board of Medicine and in effect prior to the effective date of this act, regarding the licensure of clinical psychologists shall apply mutatis mutandis to the Board of Psychology and shall remain in effect until the effective date of replacement regulations promulgated by the Board of Psychology. The Board of Psychology shall adopt regulations to implement the provisions of this act which shall be effective within 280 days of enactment of this act.