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SENATE BILL NO. 33

Offered January 14, 1998

Prefiled January 13, 1998

A BILL to amend and reenact §§ 54.1-2901, 54.1-2982, and 54.1-2987.1 of the Code of Virginia, relating to Emergency Medical Services Do Not Resuscitate Orders.

 Patron—Quayle

 Referred to the Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2901, 54.1-2982, and 54.1-2987.1 of the Code of Virginia are amended and reenacted as follows:

§ 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 bracemaker or prosthetist for the purpose of having a three-dimensional record of the deformity, when such bracemaker 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

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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 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, *hospital emergency department health care providers or other licensed hospital personnel, when acting within their scope of practice*, 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;

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 § 54.1-106;

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;

25. Any employee of any adult care residence who is certified in cardiopulmonary resuscitation (CPR) acting in compliance with the patient's individualized service plan and with the written order of the attending physician not to resuscitate a patient in the event of cardiac or respiratory arrest; or

26. Any person working as a health assistant under the direction of a licensed medical or osteopathic doctor within the Department of Corrections, the Department of Juvenile Justice or local correctional facilities.

§ 54.1-2982. Definitions.

As used in this article:

"Advance directive" means (i) a witnessed written document, voluntarily executed by the declarant in accordance with the requirements of § 54.1-2983, or (ii) a witnessed oral statement, made by the declarant subsequent to the time he is diagnosed as suffering from a terminal condition and in accordance with the provisions of § 54.1-2983.

"Agent" means an adult appointed by the declarant under an advance directive, executed or made in accordance with the provisions of § 54.1-2983, to make health care decisions for him. The declarant may also appoint an adult to make, after the declarant's death, an anatomical gift of all or any part of his body pursuant to Article 2 (§ 32.1-289 et seq.) of Chapter 8 of Title 32.1.

"Attending physician" means the primary physician who has responsibility for the treatment and care of the patient.

"Declarant" means an adult who makes an advance directive, as defined in this article, while capable of making and communicating an informed decision.

"Emergency Medical Services Do Not Resuscitate Order" means a written physician's order in a form approved by the Board of Health which authorizes qualified emergency medical service personnel or, hospital emergency department health care providers *or, for twenty-four hours following admission, other licensed hospital personnel, when acting within their scope of practice*, to withhold cardiopulmonary resuscitation from a particular patient in the event of cardiac or respiratory arrest. For purposes of this article, cardiopulmonary resuscitation shall include cardiac compression, endotracheal intubation and other advanced airway management, artificial ventilation, and defibrillation and related procedures. Emergency Medical Services Do Not Resuscitate Orders shall not authorize the withholding of other medical interventions, such as intravenous fluids, oxygen or other therapies deemed necessary to provide comfort care or to alleviate pain.

"Incapable of making an informed decision" means the inability of an adult patient, because of mental illness, mental retardation, or any other mental or physical disorder which precludes communication or impairs judgment and which has been diagnosed and certified in writing by his attending physician and a second physician or licensed clinical psychologist after personal examination of such patient, to make an informed decision about providing, withholding or withdrawing a specific

medical treatment or course of treatment because he is unable to understand the nature, extent or probable consequences of the proposed medical decision, or to make a rational evaluation of the risks and benefits of alternatives to that decision. For purposes of this article, persons who are deaf, dysphasic or have other communication disorders, who are otherwise mentally competent and able to communicate by means other than speech, shall not be considered incapable of making an informed decision.

"Life-prolonging procedure" means any medical procedure, treatment or intervention which (i) utilizes mechanical or other artificial means to sustain, restore or supplant a spontaneous vital function, or is otherwise of such a nature as to afford a patient no reasonable expectation of recovery from a terminal condition and (ii) when applied to a patient in a terminal condition, would serve only to prolong the dying process. The term includes artificially administered hydration and nutrition. However, nothing in this act shall prohibit the administration of medication or the performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain, including the administration of excess dosages of pain relieving medications in accordance with § 54.1-3408.1. For purposes of §§ 54.1-2988, 54.1-2989, and 54.1-2991, the term also shall include cardiopulmonary resuscitation by emergency medical services personnel.

"Persistent vegetative state" means a condition caused by injury, disease or illness in which a patient has suffered a loss of consciousness, with no behavioral evidence of self-awareness or awareness of surroundings in a learned manner, other than reflex activity of muscles and nerves for low level conditioned response, and from which, to a reasonable degree of medical probability, there can be no recovery.

"Physician" means a person licensed to practice medicine in the Commonwealth of Virginia or in the jurisdiction where the treatment is to be rendered or withheld.

"Qualified patient" means a patient who has made an advance directive in accordance with this article and either (i) has been diagnosed and certified in writing by the attending physician and a second physician or licensed clinical psychologist after personal examination to be incapable of making an informed decision about providing, withholding or withdrawing a specific medical treatment or course of treatment, in accordance with § 54.1-2986, or (ii) has been diagnosed and certified in writing by the attending physician to be afflicted with a terminal condition.

"Terminal condition" means a condition caused by injury, disease or illness from which, to a reasonable degree of medical probability a patient cannot recover and (i) the patient's death is imminent or (ii) the patient is in a persistent vegetative state.

"Witness" means a person who is not a spouse or blood relative of the patient. Employees of health care facilities and physician's offices, who act in good faith, shall be permitted to serve as witnesses for purposes of this article.

§ 54.1-2987.1. Authorization to follow Emergency Medical Services Do Not Resuscitate Orders.

A. Qualified emergency medical services personnel or hospital emergency department health care providers shall be authorized to follow Emergency Medical Services Do Not Resuscitate Orders pertaining to qualified patients in the pre-hospital or hospital emergency department setting in accordance with regulations promulgated by the Board of Health, if the order available to such personnel is in a form approved by the Board of Health.

B. *Further, for twenty-four hours after admission, other licensed hospital personnel, when acting within their scope of practice, shall be authorized to follow Emergency Medical Services Do Not Resuscitate Orders pertaining to qualified patients who have been admitted to the hospital from the hospital's emergency room or as a result of transport by a permitted emergency medical services vehicle operated by a permitted and franchised agency.*

C. For the purposes of this section, an Emergency Medical Services Do Not Resuscitate Order may be issued for qualified patients who are individuals diagnosed to be afflicted with terminal conditions or patients for whom attending physicians have issued Do Not Resuscitate Orders.

D. This section shall not authorize emergency medical personnel or hospital emergency department health care providers *or other hospital personnel* to follow an Emergency Medical Services Do Not Resuscitate Order for any patient who is able to, and does, express to such emergency medical services personnel or hospital emergency department health care providers *or other licensed hospital personnel* the desire to be resuscitated prior to cardiac or respiratory arrest.

E. Nothing in this section or the definition of Emergency Medical Services Do Not Resuscitate Orders provided in § 54.1-2982 shall be construed to limit the issuance of or the authorization of physicians and those persons designated in § 54.1-2901 to follow Do Not Resuscitate Orders other than Emergency Medical Services Do Not Resuscitate Orders.