

**BOARD OF LICENSED PROFESSIONAL  
COUNSELORS, MARRIAGE AND FAMILY  
THERAPISTS AND SUBSTANCE ABUSE  
PROFESSIONALS**



**APPLICABLE STATUTES FROM THE**

**CODE OF VIRGINIA**

**EFFECTIVE JULY 1, 1998**

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**TITLE 54.1 SUBTITLE I.**

**GENERAL PROVISIONS RELATING TO REGULATORY BOARDS**

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**CHAPTER 1.**

**GENERAL PROVISIONS**

**§ 54.1-100. Regulations of professions and occupations.**--The right of every person to engage in any lawful profession, trade or occupation of his choice is clearly protected by both the Constitution of the United States and the Constitution of the Commonwealth of Virginia. The Commonwealth cannot abridge such rights except as a reasonable exercise of its police powers when it is clearly found that such abridgment is necessary for the preservation of the health, safety and welfare of the public.

No regulation shall be imposed upon any profession or occupation except for the exclusive purpose of protecting the public interest when:

1. The unregulated practice of the profession or occupation can harm or endanger the health, safety or welfare of the public, and the potential for harm is recognizable and not remote or dependent upon tenuous argument;
2. The practice of the profession or occupation has inherent qualities peculiar to it that distinguish it from ordinary work and labor;
3. The practice of the profession or occupation requires specialized skill or training and the public needs, and will benefit by, assurances of initial and continuing professional and occupational ability; and
4. The public is not effectively protected by other means.

No regulation of a profession or occupation shall conflict with the Constitution of the United States, the Constitution of Virginia, the laws of the United States, or the laws of the Commonwealth of Virginia. Periodically and at least annually, all agencies regulating a profession or occupation shall review such regulations to ensure that no conflict exists.

**54.1-100.1. Department of Commerce continued as Department of Professional and Occupational Regulation.**--The Department of Professional and Occupational Regulation, formerly known as the Department of Commerce, is continued, and wherever "Department of Commerce" is used in this Code, it shall mean the Department of Professional and Occupational Regulation. The Board for Professional and Occupational Regulation, formerly known as the Board of Commerce, is continued, and wherever "Board of Commerce" is used in this Code, it shall mean the Board for Professional and Occupational Regulation.

**§ 54.1-101. Copies of examinations filed by regulatory boards.**--A copy of examinations given by regulatory and advisory boards within the Department of Professional and Occupational Regulation and the Department of Health Professions authorized to conduct examinations of

applicants for admission to practice or pursue any profession, vocation, trade, calling, or art shall be kept on file at the office of the secretary of each board. A copy of the examination shall be placed on file within ten days after it is administered, and shall be preserved for at least one year as a public record accessible to any person desiring to examine it during usual business hours. After the expiration of one year from the time the examination is filed, the secretary of the respective board may withdraw and destroy the examination. However, this section shall not be construed or interpreted in a manner to require the filing or release of examinations or other information which would result in compromising the validity or security of future examinations conducted by regulatory or advisory boards of the Department of Professional and Occupational Regulation or the Department of Health Professions. In the event any provision of this section results in a conflict with the provisions of § 54.1-108, the provisions of § 54.1-108 shall prevail.

**§ 54.1-102. Unlawful procurement of certificate, license or permit; unauthorized possession of examination or answers; penalty.**

A. It shall be unlawful:

1. For any person to procure, or assist another to procure, through theft, fraud or other illegal means, a certificate, license or permit, from any state board, or other body charged by law with the responsibility of examining persons desiring to engage in a regulated business or profession, by giving to, or receiving from, any person any information, oral, written or printed, during the administration of the examination, which is intended to, or will, assist any person taking the examination in passing the examination and obtaining the required certificate, license or permit;
2. For any person, other than a member or officer of the board or body, to procure or have in his possession prior to the beginning of an examination, without written authority of a member or officer of the board or body, any question intended to be used by the board or body conducting the examination, or to receive or furnish to any person taking the examination, prior to or during the examination, any written or printed material purporting to be answers to, or aid in answering such questions;
3. For any person to attempt to procure, through theft, fraud or other illegal means, any questions intended to be used by the board or body conducting the examination, or the answers to the questions;
4. To promise or offer any valuable or other consideration to a person having access to the questions or answers as an inducement to procure for delivery to the promisor, or any other person, a copy or copies of any questions or answers.

If an examination is divided into separate parts, each of the parts shall be deemed an examination for the purposes of this section.

B. Any person violating the provisions of subsection A shall be guilty of a Class 2 misdemeanor.

**§ 54.1-103. Additional training of regulated persons; reciprocity; endorsement.**

- A. The regulatory boards within the Department of Professional and Occupational Regulation and the Department of Health Professions may promulgate regulations specifying additional training or conditions for individuals seeking certification or licensure, or for the renewal of certificates or licenses.
- B. The regulatory boards may enter into agreements with other jurisdictions for the recognition

of certificates and licenses issued by other jurisdictions.

- C. The regulatory boards are authorized to promulgate regulations recognizing licenses or certificates issued by other states, the District of Columbia, or any territory or possession of the United States as full or partial fulfillment of qualifications for licensure or certification in the Commonwealth.

**§ 54.1-104. Suspension of license, certificate, registration, or authority for dishonor of fee payment; reinstatement.**--The Department of Professional and Occupational Regulation and the Department of Health Professions may suspend the license, certificate, registration or authority it has issued any person who submits a check, money draft or similar instrument for payment of a fee required by statute or regulation which is not honored by the bank or financial institution named. The suspension shall become effective ten days following delivery by certified mail of written notice of the dishonor and the impending suspension to such person's address. Upon notification of suspension, the person may reinstate the license, certificate, registration or authority upon payment of the fee and penalties required under statute or regulation. Suspension under this provision shall be exempt from the Administrative Process Act (§ 9-6.14:1 et seq.).

**§ 54.1-105. Majority of board or panel required to suspend or revoke license, certificate or registration; imposition of sanctions.**--An affirmative vote of a majority of those serving on a board who are qualified to vote or those serving on a panel of a health regulatory board convened pursuant to § 54.1-2400 shall be required for any action to suspend or revoke a license, certification or registration or to impose a sanction on a licensee. However, an affirmative vote of a majority of a quorum of the regulatory board shall be sufficient for summary suspension pursuant to specific statutory authority.

**§ 54.1-106. Health care professionals rendering services to patients of certain clinics exempt from liability.**

- A. No person who is licensed or certified by the Boards of/for Audiology and Speech-Language Pathology, Dentistry, Medicine, Nursing, Optometry, Opticians, Pharmacy, Hearing Aid Specialists, Psychology, Social Work or Professional Counselors who renders at any site any health care services within the limits of his license or certification, 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, shall be liable for any civil damages for any act or omission resulting from the rendering of such services unless the act or omission was the result of his gross negligence or willful misconduct.

For purposes of this section, any commissioned or contract medical officers or dentists serving on active duty in the United States armed services and assigned to duty as practicing commissioned or contract medical officers or dentists at any military hospital or medical facility owned and operated by the United States government and located in the Commonwealth shall be deemed to be licensed pursuant to this title.

- B. For the purposes of Article 5.1 (§ 2.1-526.1 et seq.) of Chapter 32 of Title 2.1, any person rendering such health care services who (i) is registered with the Division of Risk Management and (ii) has no legal or financial interest in the clinic from which the patient is

referred shall be deemed an agent of the Commonwealth and to be acting in an authorized governmental capacity with respect to delivery of such health care services. The premium for coverage of such person under the Risk Management Plan shall be paid by the Department of Health.

- C. For the purposes of this section and Article 5.1 of Chapter 32 of Title 2.1, "delivery of health care services without charge" shall be deemed to include the delivery of dental services when a reasonable minimum fee is charged to cover administrative costs.

**§ 54.1-107. Appointments, terms and removal of members of regulatory boards; citizen members.**--All members of regulatory boards shall be citizens of the United States and residents of Virginia. Members shall be appointed by the Governor and may be removed by him as provided in subsection B of § 2.1-43. Any vacancy occurring other than by expiration of terms shall be filled for the unexpired term. Members shall hold office after expiration of their terms until their successors are duly appointed and have qualified. Appointment to fill an unexpired term shall not be considered a full term. All members of regulatory boards appointed by the Governor for terms commencing on or after July 1, 1988, shall be appointed for terms of four years. No member shall serve more than two successive full terms on any regulatory board.

A "citizen member" of a regulatory board shall be a person who (i) is not by training or experience a practitioner of the profession or occupation regulated by the board, (ii) is not the spouse, parent, child, or sibling of such a practitioner, and (iii) has no direct or indirect financial interest, except as a consumer, in the practice of the profession or occupation regulated by the board.

The provisions of this section shall not apply to the Board for Branch Pilots.

**§ 54.1-108. Disclosure of official records.**--Official records of the Department of Professional and Occupational Regulation or the Department of Health Professions or any board named in this title shall be subject to the disclosure provisions of the Virginia Freedom of Information Act (§ 2.1-340 et seq.), except for the following:

1. Examination questions, papers, booklets and answer sheets, which may be disclosed at the discretion of the board administering or causing to be administered such examinations.
2. Applications for admission to examinations or for licensure, and the scoring records maintained by any board or by the Departments on individual licensees or applicants. However, this material may be made available during normal working hours for copying by the subject individual at his expense at the office of the Department or board which possesses the material.
3. Records of active investigations being conducted by the Departments or any board.

**§ 54.1-109. Reviews and appeals.**--Any person who has been aggrieved by any action of the Department of Professional and Occupational Regulation, Department of Health Professions, Board for Professional and Occupational Regulation, Board of Health Professions, any regulatory board within the Departments or any panel of a health regulatory board convened pursuant to § 54.1-2400 shall be entitled to a review of such action. Appeals from such actions shall be in accordance with

the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

**§ 54.1-110. Presiding officer; participation of board in hearing; disqualification of board member.**

- A. Every hearing in a contested case shall be conducted in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.). When a hearing officer presides, the regulatory board shall determine whether the hearing officer is to hear the case alone or with a panel of a health regulatory board convened pursuant to § 54.1-2400 or whether the board is to hear the case with the hearing officer.
- B. A board member shall disqualify himself and withdraw from any case in which he cannot accord fair and impartial consideration. Any party may request the disqualification of any board member by stating with particularity the grounds upon which it is claimed that fair and impartial consideration cannot be accorded. The remaining members of the board or panel shall determine whether the individual should be disqualified.

**§ 54.1-111. Unlawful acts; prosecution; proceedings in equity.**

A. It shall be unlawful for any person, partnership, corporation or other entity to engage in any of the following acts:

1. Practicing a profession or occupation without holding a valid license as required by statute or regulation.
2. Making use of any designation provided by statute or regulation to denote a standard of professional or occupational competence without being duly certified or licensed.
3. Making use of any titles, words, letters or abbreviations which may reasonably be confused with a designation provided by statute or regulation to denote a standard of professional or occupational competence without being duly certified or licensed.
4. Performing any act or function which is restricted by statute or regulation to persons holding a professional or occupational license or certification, without being duly certified or licensed.
5. Failing to register as a practitioner of a profession or occupation as required by statute or regulation.
6. Materially misrepresenting facts in an application for licensure, certification or registration.
7. Willfully refusing to furnish a regulatory board information or records required or requested pursuant to statute or regulation.
8. Violating any statute or regulation governing the practice of any profession or occupation regulated pursuant to this title.
9. Refusing to process a request, tendered in accordance with the regulations of the relevant health regulatory board or applicable statutory law, for patient records or prescription dispensing records after the closing of a business or professional practice or the transfer of ownership of a business or professional practice.

Any person who willfully engages in any unlawful act enumerated in this section shall be guilty of a Class 1 misdemeanor. The third or any subsequent conviction for violating this section during a thirty-six-month period shall constitute a Class 6 felony.

B. In addition to the criminal penalties provided for in subsection A of this section, the Department of Professional and Occupational Regulation or the Department of Health Professions, without

compliance with the Administrative Process Act (§ 9-6.14:1 et seq.), shall have the authority to enforce the provisions of subsection A of this section and may institute proceedings in equity to enjoin any person, partnership, corporation or any other entity from engaging in any unlawful act enumerated in this section. Such proceedings shall be brought in the name of the Commonwealth by the appropriate Department in the circuit court of the city or county in which the unlawful act occurred or in which the defendant resides.

C. This section shall not be construed to prohibit or prevent the owner of patient records from (i) retaining copies of his patient records or prescription dispensing records after the closing of a business or professional practice or the transfer of ownership of a business or professional practice or (ii) charging a reasonable fee, not in excess of the amounts authorized in § 8.01-413, for copies of patient records.

**§ 54.1-112. Copies of records as evidence.**—Copies of all records, documents and other papers of the Department of Professional and Occupational Regulation and the Department of Health Professions and their regulatory boards which bear the official seal and which are duly certified and authenticated in writing on the face of such documents to be true copies by the custodian thereof and by the person to whom the custodian reports shall be received as evidence with like effect as the original records, documents or other papers in all courts of the Commonwealth.

**§ 54.1-113. Regulatory boards to adjust fees.**—Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

**§ 54.1-114. Biennial report.**— The Board of Bar Examiners, the Department of Professional and Occupational Regulation and the Department of Health Professions shall submit biennial reports to the Governor and General Assembly on or before November 1 of each even-numbered year. The biennial report shall contain at a minimum the following information for the Board of Bar Examiners and for each board within the two Departments: (i) a summary of the board's fiscal affairs, (ii) a description of the board's activities, (iii) statistical information regarding the administrative hearings and decisions of the board, (iv) a general summary of all complaints received against licensees and the procedures used to resolve the complaints, and (v) a description of any action taken by the board designed to increase public awareness of board operations and to facilitate public participation. The Department of Health Professions shall include, in those portions of its report relating to the Board of Medicine, a compilation of the data required by § 54.1-2910.1. The biennial report shall be distributed in accordance with the provisions of § 2.1-467.

**§ 54.1-116. Applicants to include social security numbers or other identifying number**  
Every applicant for a license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued by the Commonwealth pursuant to this title, and every applicant for renewal thereof, shall provide on the application either his social security number or control number issued by the Department of Motor Vehicles pursuant to § 46.2-342.

An initial application or renewal application which does not include either identifying number shall not be considered or acted upon by the issuing entity, and no refund of any fees paid with the application shall be granted.

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### SUBTITLE III.

## PROFESSIONS AND OCCUPATIONS REGULATED BY BOARD WITHIN THE DEPARTMENT OF HEALTH PROFESSIONS

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### CHAPTER 24.

#### GENERAL PROVISIONS

**§ 54.1-2400. General powers and duties of health regulatory boards.**--The general powers and duties of health regulatory boards shall be:

1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.

2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.

3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.

4. To establish schedules for renewals of registration, certification and licensure.

5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.

6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title.

7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.

8. To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.

9. To take appropriate disciplinary action for violations of applicable law and regulations.

10. To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-

2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.

11. To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.

12. To issue inactive licenses or certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of licenses or certificates.

**§ 54.1-2400.1. Mental health service providers; duty to protect third parties; immunity.**

A. As used in this section:

*"Certified substance abuse counselor"* means a person certified to provide substance abuse counseling in a state-approved public or private substance abuse program or facility.

*"Client"* or *"patient"* means any person who is voluntarily or involuntarily receiving mental health services or substance abuse services from any mental health service provider.

*"Clinical psychologist"* means a person who practices clinical psychology as defined in § 54.1-3600.

*"Clinical social worker"* means a person who practices social work as defined in § 54.1-3700.

*"Licensed practical nurse"* means a person licensed to practice practical nursing as defined in § 54.1-3000.

*"Licensed substance abuse treatment practitioner"* means any person licensed to engage in the practice of substance abuse treatment as defined in § 54.1-3500.

*"Marriage and family therapist"* means a person licensed to engage in the practice of marriage and family therapy as defined in § 54.1-3500.

*"Mental health professional"* means a person who by education and experience is professionally qualified and licensed in Virginia to provide counseling interventions designed to facilitate an individual's achievement of human development goals and remediate mental, emotional, or behavioral disorders and associated distresses which interfere with mental health and development.

*"Mental health service provider"* or *"provider"* refers to any of the following: (i) a person who provides professional services as a certified substance abuse counselor, clinical psychologist, clinical social worker, licensed substance abuse treatment practitioner, licensed practical nurse, marriage and family therapist, mental health professional, physician, professional counselor, psychologist, registered nurse, school psychologist, or social worker; (ii) a professional corporation, all of whose shareholders or members are so licensed; or (iii) a

partnership, all of whose partners are so licensed.

"Professional counselor" means a person who practices counseling as defined in § 54.1-3500.

"Psychologist" means a person who practices psychology as defined in § 54.1-3600.

"Registered nurse" means a person licensed to practice professional nursing as defined in § 54.1-3000.

"School psychologist" means a person who practices school psychology as defined in § 54.1-3600.

"Social worker" means a person who practices social work as defined in § 54.1-3700.

B. A mental health service provider has a duty to take precautions to protect third parties from violent behavior or other serious harm only when the client has orally, in writing, or via sign language, communicated to the provider a specific and immediate threat to cause serious bodily injury or death to an identified or readily identifiable person or persons, if the provider reasonably believes, or should believe according to the standards of his profession, that the client has the intent and ability to carry out that threat immediately or imminently. If the third party is a child, in addition to taking precautions to protect the child from the behaviors in the above types of threats, the provider also has a duty to take precautions to protect the child if the client threatens to engage in behaviors that would constitute physical abuse or sexual abuse as defined in § 18.2-67.10. The duty to protect does not attach unless the threat has been communicated to the provider by the threatening client while the provider is engaged in his professional duties.

C. The duty set forth in subsection B is discharged by a mental health service provider who takes one or more of the following actions:

1. Seeks civil commitment of the client under Chapter 2 (§ 37.1-63 et seq.) of Title 37.1.
2. Makes reasonable attempts to warn the potential victims or the parent or guardian of the potential victim if the potential victim is under the age of eighteen.
3. Makes reasonable efforts to notify a law-enforcement official having jurisdiction in the client's or potential victim's place of residence or place of work, or place of work of the parent or guardian if the potential victim is under age eighteen, or both.
4. Takes steps reasonably available to the provider to prevent the client from using physical violence or other means of harm to others until the appropriate law-enforcement agency can be summoned and takes custody of the client.
5. Provides therapy or counseling to the client or patient in the session in which the threat has been communicated until the mental health service provider reasonably believes that the client no longer has the intent or the ability to carry out the threat.

D. A mental health service provider shall not be held civilly liable to any person for:

1. Breaching confidentiality with the limited purpose of protecting third parties by communicating the threats described in subsection B made by his clients to potential third party victims or law-enforcement agencies or by taking any of the actions specified in subsection C.
2. Failing to predict, in the absence of a threat described in subsection B, that the client would cause the third party serious physical harm.
3. Failing to take precautions other than those enumerated in subsection C to protect a potential third party victim from the client's violent behavior.

**§ 54.1-2400.2. Confidentiality of information obtained during an investigation or disciplinary proceeding.**

A. Any reports, information or records received and maintained by any health regulatory board in connection with possible disciplinary proceedings, including any material received or developed by a board during an investigation or proceeding, shall be strictly confidential. A board may only disclose such confidential information:

1. In a disciplinary proceeding before a board or in any subsequent trial or appeal of an action or order;
2. To regulatory authorities concerned with granting, limiting or denying licenses, certificates or registrations to practice a health profession;
3. To hospital committees concerned with granting, limiting or denying hospital privileges if a final determination regarding a violation has been made;
4. Pursuant to an order of a court of competent jurisdiction; or
5. To qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any person is first deleted. Such release shall be made pursuant to a written agreement to ensure compliance with this section.

B. In no event shall confidential information received, maintained or developed by any 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 services. This section shall not, however, be construed to inhibit an investigation or prosecution under Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2.

C. Any claim of a physician-patient or practitioner-patient privilege shall not prevail in any investigation or proceeding by any health regulatory board acting within the scope of its authority. The disclosure, however, of any information pursuant to this provision shall not be deemed a waiver of such privilege in any other proceeding.

D. Orders and notices of a board relating to disciplinary action shall be disclosed.

E. This section shall not prohibit the Director of the Department of Health Professions, after consultation with the relevant health regulatory 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 regulated by any health regulatory board.

F. This section shall not prohibit the Director of the Department of Health Professions from disclosing matters listed in subdivision A 1, A 2, or A 3 of § 54.1-2909; from making the reports of aggregate information and summaries required by § 54.1-2400.3; or from disclosing the information required to be made available to the public pursuant to § 54.1-2910.1.

G. Orders and notices of the health regulatory boards relating to disciplinary actions shall be disclosed.

H. Any person found guilty of the unlawful disclosure of confidential information possessed by a health regulatory board shall be guilty of a Class 1 misdemeanor.

**§ 54.1-2400.3. Disciplinary actions to be reported.**--In addition to the information required by § 54.1-114, the Director shall include in the Department's biennial report the number of reports or complaints of misconduct received and the investigations, charges, findings, and sanctions resulting therefrom. The report shall reflect the categories of allegations, kinds of complaints and the rates of disciplinary activity for the various regulated professions and the health regulatory boards having jurisdiction; summaries explaining the reported data shall be included with the report. The information shall be reported only in the aggregate without reference to any individual's name or identifying particulars. In those portions of this report relating to the Board of Medicine, the Director shall include a summary of the data required by § 54.1-2910.1.

**§ 54.1-2401. Monetary penalty.**-- Any person licensed, registered or certified by any health regulatory board who violates any provision of statute or regulation pertaining to that board and who is not criminally prosecuted, may be subject to the monetary penalty provided in this section. If the board or any special conference committee determines that a respondent has violated any provision of statute or regulation pertaining to the board, it shall determine the amount of any monetary penalty to be imposed for the violation, which shall not exceed \$1,000 for each violation. The penalty may be sued for and recovered in the name of the Commonwealth. All such monetary penalties shall be deposited in the Literary Fund

**§ 54.1-2402. Citizen members on health regulatory boards.**--Citizen members appointed to boards within the Department of Health Professions after July 1, 1986, shall participate in all matters. Of the citizen members first appointed to boards with two citizen members, one shall be appointed for a term of two years and one for the maximum term established for members of the respective board. On boards with one citizen member, the citizen member initially appointed shall be appointed for the maximum term established for members of that board. The provisions of this section relating to terms of citizen members on such boards shall not apply to the Board of Medicine or to the Board of Funeral Directors and Embalmers. For the purposes of this section, "citizen member" shall have the meaning provided in § 54.1-107.

**§ 54.1-2402.1. Appointments, removals, and limitation of terms of members of regulatory boards.**--Except as otherwise expressly provided, members shall be appointed by the Governor and may be removed by him as provided in § 2.1-43 B. Any vacancy occurring other than by expiration of term shall be filled for the unexpired term. Members shall hold office after expiration of their terms until their successors are duly appointed and have qualified.

All members of regulatory boards appointed by the Governor for terms commencing on or after July 1, 1988, shall be appointed for terms of four years. No members shall serve more than two successive full terms on any regulatory board.

**§ 54.1-2403. Certain advertising prohibited.**--No person licensed by one of the boards within the Department shall use any form of advertising that contains any false, fraudulent, misleading or deceptive statement or claim.

**§ 54.1-2403.1. Protocol for certain medical history screening required.**

- A. As a routine component of every pregnant woman's prenatal care, every practitioner licensed pursuant to this subtitle who renders prenatal care, regardless of the site of such practice, shall establish and implement a medical history protocol for screening pregnant women for substance abuse to determine the need for a specific substance abuse evaluation. The medical history protocol shall include, but need not be limited to, a description of the screening device and shall address abuse of both legal and illegal substances. The medical history screening may be followed, as necessary and appropriate, with a thorough substance abuse evaluation.
- B. The results of such medical history screening and of any specific substance abuse evaluation which may be conducted shall be confidential and, if the woman is enrolled in a treatment program operated by any facility receiving federal funds, shall only be released as provided in federal law and regulations. However, if the woman is not enrolled in a treatment program or is not enrolled in a program operated by a facility receiving federal funds, the results may only be released to the following persons:
1. The subject of the medical history screening or her legally authorized representative.
  2. Any person designated in a written release signed by the subject of the medical history screening or her legally authorized representative.
  3. Health care providers for the purposes of consultation or providing care and treatment to the person who was the subject of the medical history screening.
- C. The results of the medical history screening required by this section or any specific substance abuse evaluation which may be conducted as part of the prenatal care shall not be admissible in any criminal proceeding.
- D. Practitioners shall advise their patients of the results of the medical history screening and specific substance abuse evaluation, and shall provide such information to third-party payers as may be required for reimbursement of the costs of medical care. However, such information shall not be admissible in any criminal proceedings. Practitioners shall advise all pregnant women whose medical history screenings and specific substance abuse evaluations are positive for substance abuse of appropriate treatment and shall inform such women of the potential for poor birth outcomes from substance abuse.

**§ 54.1-2403.2. Record storage.--** A. Medical records, as defined in § 42.1-77, may be stored by computerized or other electronic process or microfilm, or other photographic, mechanical, or chemical process; however, the stored record shall identify the location of any documents or information that could not be so technologically stored. If the technological storage process creates an unalterable record, a health care provider licensed, certified or registered by a health regulatory board within the Department shall not be required to maintain paper copies of medical records that have been stored by computerized or other electronic process, microfilm, or other photographic, mechanical, or chemical process. Upon completing such technological storage, paper copies of medical records may be destroyed in a manner that preserves the patient's confidentiality. However, any documents or information that could not be so technologically stored shall be preserved.

B. Notwithstanding the authority given in this section to store patient records in the form of microfilm, prescription dispensing records maintained in or on behalf of any pharmacy registered or

permitted in Virginia shall only be stored in compliance with §§ 54.1-3410, 54.1-3411 and 54.1-3412.

**§ 54.1-2403.3. Medical records; ownership; provision of copies.**-- Medical records maintained by any health care provider as defined in § 32.1-127.1:03 shall be the property of such health care provider or, in the case of a health care provider employed by another health care provider, the property of the employer. Such health care provider shall release copies of any such medical records in compliance with § 32.1-127.1:03 or § 8.01-413, if the request is made for purposes of litigation, or as otherwise provided by state or federal law.

**§ 54.1-2404. Itemized statements required upon request.**--Upon the request of any of his patients, any health care provider licensed or certified by any of the boards within the Department, except in the case of health care services as defined in Chapter 43 of Title 38.2, shall provide to such patient an itemized statement of the charges for the services rendered to the requesting patient regardless of whether a bill for the services which are the subject of the request has been or will be submitted to any third party payor including medical assistance services or the state/local hospitalization program.

**§ 54.1-2405. Transfer of patient records in conjunction with sale of practice; notice required.**--No person licensed, registered, or certified by one of the health regulatory boards under the Department shall transfer records pertaining to a current patient in conjunction with the sale of a professional practice until such person has first attempted to notify the patient of the pending transfer, by mail, at the patient's last known address, and by publishing prior notice in a newspaper of general circulation within the provider's practice area. The notice shall specify that, at the written request of the patient or an authorized representative, within a reasonable time period, the records or copies will be sent to any other like-regulated provider of the patient's choice or destroyed.

**§ 54.1-2406. Treatment records of practitioners.**--No records of the identity, diagnosis, prognosis, or treatment of any practitioner of any profession regulated by any of the regulatory boards within the Department of Health Professions obtained by the Department or any health regulatory board from a health care provider or facility that is treating or has treated such practitioner for drug addiction or chronic alcoholism shall be disclosed except:

1. In a disciplinary hearing before a health regulatory board or in any subsequent trial or appeal of a board action or order;
2. To licensing or disciplinary authorities of other jurisdictions or to hospital committees located within or outside this Commonwealth which are concerned with granting, limiting, or denying a physician hospital privileges if a final determination regarding disciplinary action has been made; or
3. Pursuant to an order of a court of competent jurisdiction.

**§ 54.1-2407. Requirements for human research.**--Any person licensed, registered, or certified by any health regulatory board who engages in the conduct of human research, as defined in § 32.1-162.16, shall comply with the provisions of Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1. Failure to so comply shall constitute unprofessional conduct.

**§ 54.1-2408. Disqualification for license, certificate or registration.**--A board within the Department of Health Professions shall refuse to admit a candidate to any examination and shall refuse to issue a license, certificate or registration to any applicant if the candidate or applicant has had his license, certificate or registration to practice the profession or occupation revoked or suspended, and has not had his license, certificate or registration to so practice reinstated by the jurisdiction which revoked or suspended his license, certificate or registration.

**§ 54.1-2408.1. Summary suspension of licenses, certificates or registrations; allegations to be in writing**

A. Any health regulatory board may suspend the license, certificate or registration of any person holding a license, certificate or registration issued by it without a hearing simultaneously with the institution of proceedings for a hearing, if the relevant board finds that there is a substantial danger to the public health or safety which warrants this action. A board may meet by telephone conference call when summarily suspending a license, certificate or registration 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 by the individual 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.

B. Allegations of violations of this title shall be made in writing to the relevant health regulatory board.

**§ 54.1-2409. Mandatory suspension or revocation; reinstatement; appeal.**--Upon receipt of documentation by a court or agency, state or federal, that a person licensed, certified or registered by a board within the Department of Health Professions has had his license, certificate or registration to practice the same profession or occupation revoked or suspended in another jurisdiction and has not had his license, certificate or registration to so practice reinstated within that jurisdiction, or has been convicted of a felony or has been adjudged legally incompetent, the Director of the Department shall immediately suspend, without a hearing, the license, certificate or registration of any person so disciplined, convicted or adjudged. The Director shall notify such person or his legal guardian, trustee, committee or other representative of the suspension in writing to his address on record with the Department. Such notice shall include a copy of the order of such court or agency, certified by the Director as the order received from such court or agency. Such person shall not have the right to practice within this Commonwealth until his license, certificate or registration has been reinstated by the Board.

The clerk of any court in which a conviction of a felony or an adjudication of incompetence is made, who has knowledge that a person licensed, certified or registered by a board within the Department has been convicted or found incompetent, shall have a duty to report these findings promptly to the Director.

When a conviction has not become final, the Director may decline to suspend the license, certificate or registration until the conviction becomes final if there is a likelihood of injury or damage to the public if the person's services are not available.

Any person whose license, certificate or registration has been suspended as provided in this section may apply to the board for reinstatement of his license, certificate or registration. Such person shall be entitled to a hearing not later than the next regular meeting of the board after the expiration of thirty days from the receipt of such application, and shall have the right to be represented by counsel and to summon witnesses to testify in his behalf.

The reinstatement of the applicant's license, certificate or registration shall require the affirmative vote of three-fourths of the members of the board. The board may order such reinstatement without further examination of the applicant, or reinstate the license, certificate or registration upon such terms and conditions as it deems appropriate.

**§ 54.1-2409.1. Criminal penalties for practicing certain professions and occupations without appropriate license.**—Any person who, without holding a current valid license, issued by a regulatory board pursuant to this title (i) performs an invasive procedure for which a license is required; (ii) administers, prescribes, sells, distributes, or dispenses a controlled drug; or (iii) practices a profession or occupation after having his license to do so suspended or revoked shall be guilty of a Class 6 felony.

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## CHAPTER 24.1.

### PRACTITIONER SELF-REFERRAL ACT.

§ 54.1-2410. **Definitions.**--As used in this chapter or when referring to the Board of Health Professions regulatory authority therefor, unless the context requires a different meaning:

"*Board*" means the Board of Health Professions.

"*Community*" means a city or a county.

"*Demonstrated need*" means (i) there is no facility in the community providing similar services and (ii) alternative financing is not available for the facility, or (iii) such other conditions as may be established by Board regulation.

"*Entity*" means any person, partnership, firm, corporation, or other business that delivers health services.

"*Group practice*" means two or more health care practitioners who are members of the same legally organized partnership, professional corporation, not-for-profit corporation, faculty practice or similar association in which (i) each member provides substantially the full range of services within his licensed or certified scope of practice at the same location as the other members through the use of the organization's office space, facilities, equipment, or personnel; (ii) payments for services received from a member are treated as receipts of the organization; and (iii) the overhead expenses and income from the practice are distributed according to methods previously determined by the members.

"*Health services*" means any procedures or services related to prevention, diagnosis, treatment, and care rendered by a health care worker, regardless of whether the worker is regulated by the Commonwealth.

"*Immediate family member*" means the individual's spouse, child, child's spouse, stepchild, stepchild's spouse, grandchild, grandchild's spouse, parent, stepparent, parent-in-law, or sibling.

"*Investment interest*" means the ownership or holding of an equity or debt security, including, but not limited to, shares of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity or debt instruments, except investment interests in a hospital licensed pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1.

"*Investor*" means an individual or entity directly or indirectly possessing a legal or beneficial ownership interest, including an investment interest.

"*Office practice*" means the facility or facilities at which a practitioner, on an ongoing basis, provides or supervises the provision of health services to consumers.

"Practitioner" means any individual certified or licensed by any of the health regulatory boards within the Department of Health Professions, except individuals regulated by the Board of Funeral Directors and Embalmers or the Board of Veterinary Medicine.

"Referral" means to send or direct a patient for health services to another health care practitioner or entity outside the referring practitioner's group practice or office practice or to establish a plan of care which requires the provision of any health services outside the referring practitioner's group practice or office practice.

**§ 54.1-2411. Prohibited referrals and payments; exceptions.**

- A. Unless the practitioner directly provides health services within the entity and will be personally involved with the provision of care to the referred patient, or has been granted an exception by the Board or satisfies the provisions of subsection D of this section, a practitioner shall not refer a patient for health services to an entity outside the practitioner's office or group practice if the practitioner or any of the practitioner's immediate family members is an investor in such entity.
- B. The Board may grant an exception to the prohibitions in this chapter, and may permit a practitioner to invest in and refer to an entity, regardless of whether the practitioner provides direct services within such entity, if there is a demonstrated need in the community for the entity and all of the following conditions are met:
1. Individuals other than practitioners are afforded a bona fide opportunity to invest in the entity on the same and equal terms as those offered to any referring practitioner;
  2. No investor-practitioner is required or encouraged to refer patients to the entity or otherwise generate business as a condition of becoming or remaining an investor;
  3. The services of the entity are marketed and furnished to practitioner-investors and other investors on the same and equal terms;
  4. The entity does not issue loans or guarantee any loans for practitioners who are in a position to refer patients to such entity;
  5. The income on the practitioner's investment is based on the practitioner's equity interest in the entity and is not tied to referral volumes; and
  6. The investment contract between the entity and the practitioner does not include any covenant or clause limiting or preventing the practitioner's investment in other entities.

Unless the Board, the practitioner, or entity requests a hearing, the Board shall determine whether to grant or deny an exception within ninety days of the receipt of a written request from the practitioner or entity, stating the facts of the particular circumstances and certifying compliance with the conditions required by this subsection. The Board's decision shall be a final administrative decision and shall be subject to judicial review pursuant to the Administrative Process Act (§ 9-6.14:1 et seq.).

- C. When an exception is granted pursuant to subsection B:
1. The practitioner shall disclose his investment interest in the entity to the patient at the time of referral. If alternative entities are reasonably available, the practitioner shall provide the patient with a list of such alternative entities and shall inform the patient of

the option to use an alternative entity. The practitioner shall also inform the patient that choosing another entity will not affect his treatment or care;

2. Information on the practitioner's investment shall be provided if requested by any third party payor;
3. The entity shall establish and utilize an internal utilization review program to ensure that practitioner-investors are engaging in appropriate and necessary utilization; and
4. In the event of a conflict of interests between the practitioner's ownership interests and the best interests of any patient, the practitioner shall not make a referral to such entity, but shall make alternative arrangements for the referral.

D. Further, a practitioner may refer patients for health services to a publicly traded entity in which such practitioner has an investment interest, without applying for or receiving an exception from the Board, if all of the following conditions are met:

1. The entity's stock is listed for trading on the New York Stock Exchange or the American Stock Exchange or is a national market system security traded under an automated interdealer quotation system operated by the National Association of Securities Dealers;
2. The entity had, at the end of the corporation's most recent fiscal year, total net assets of at least \$50,000,000 related to the furnishing of health services;
3. The entity markets and furnishes its services to practitioner-investors and other practitioners on the same and equal terms;
4. All stock of the entity, including the stock of any predecessor privately held company, is one class without preferential treatment as to status or remuneration;
5. The entity does not issue loans or guarantee any loans for practitioners who are in a position to refer patients to such entity;
6. The income on the practitioner's investment is not tied to referral volumes and is based on the practitioner's equity interest in the entity; and
7. The practitioner's investment interest does not exceed one half of one percent of the entity's total equity.

**§ 54.1-2412. Board to administer; powers and duties of Board; penalties for violation.**

- A. In addition to its other powers and duties, the Board of Health Professions shall administer the provisions of this chapter.
- B. The Board shall promulgate, pursuant to the Administrative Process Act (§ 9-6.14:1 et seq.), regulations to:
  1. Establish standards, procedures, and criteria which are reasonable and necessary for the effective administration of this chapter;
  2. Establish standards, procedures, and criteria for determining compliance with, exceptions to, and violations of the provisions of § 54.1-2411;
  3. Establish standards, procedures, and criteria for advising practitioners and entities of the applicability of this chapter to activities and investments;
  4. Levy and collect fees for processing requests for exceptions from the prohibitions set forth in this chapter and for authorization to make referrals pursuant to § 54.1-2411 B;
  5. Establish standards, procedures, and criteria for review and referral to the appropriate health regulatory board of all reports of investigations of alleged violations of this

chapter by practitioners and for investigations and determinations of violations of this chapter by entities;

6. Establish standards, procedures, and criteria for granting exceptions from the prohibitions set forth in this chapter; and
7. Establish such other regulations as may reasonably be needed to administer this chapter.

- C. Upon a determination of a violation by the Board, pursuant to the Administrative Process Act (§ 9-6.14:1 et seq.), any entity, other than a practitioner, that presents or causes to be presented a bill or claim for services that the entity knows or has reason to know is prohibited by § 54.1-2411 shall be subject to a monetary penalty of no more than \$20,000 per referral, bill, or claim. The monetary penalty may be sued for and recovered in the name of the Commonwealth. All such monetary penalties shall be deposited in the Literary Fund.
- D. Any violation of this chapter by a practitioner shall constitute grounds for disciplinary action as unprofessional conduct by the appropriate health regulatory board within the Department of Health Professions. Sanctions for violation of this chapter may include, but are not limited to, the monetary penalty authorized in § 54.1-2401.

**§ 54.1-2413. Additional conditions related to practitioner-investors.**

- A. No hospital licensed in this Commonwealth shall discriminate against or otherwise penalize any practitioner for compliance with the provisions of this chapter.
- B. No practitioner, other health care worker, or entity shall enter into any agreement, arrangement, or scheme intended to evade the provisions of this chapter by inducing patient referrals in a manner which would be prohibited by this chapter if the practitioner made the referrals directly.
- C. No group practice shall be formed for the purpose of facilitating referrals that would otherwise be prohibited by this chapter.
- D. Notwithstanding the provisions of this chapter, a practitioner may refer a patient who is a member of a health maintenance organization to an entity in which the practitioner is an investor if the referral is made pursuant to a contract with the health maintenance organization.

**§ 54.1-2414. Applicability of chapter; grace period for compliance.**--This chapter shall apply, in the case of any investment interest acquired after February 1, 1993, to referrals for health services made by a practitioner on or after July 1, 1993. However, in the case of any investment interest acquired prior to February 1, 1993, compliance with the provisions of this chapter is required by July 1, 1996.

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CHAPTER 25.

DEPARTMENT OF HEALTH PROFESSIONS

§ 54.1-2500. **Definitions.**--As used in this chapter, unless the context requires a different meaning:

"Board" means the Board of Health Professions.

"Department" means the Department of Health Professions.

"Director" means the Director of the Department of Health Professions.

"Health regulatory board" or "regulatory board" means any board included within the Department of Health Professions as provided in § 54.1-2503.

§ 54.1-2501. **Department established.**--The Department of Health Professions established within the executive branch, shall be under the supervision and management of the Director of the Department.

§ 54.1-2502. **Use of consultants in investigations.**--The Department of Health Professions shall establish a roster of consultants in health care specialties for each health regulatory board, as required. The Department shall contract with each consultant to assist in the investigation and evaluation of violations of statute or regulations of the health regulatory boards and to provide expert testimony as necessary in any subsequent administrative hearing. The cost of the consultants shall be paid by the board for which the services are provided.

Any consultant under contract to the Department shall have immunity from civil liability resulting from any communication, finding, opinion or conclusion made in the course of his duties unless such person acted in bad faith or with malicious intent.

§ 54.1-2503. **Boards within Department.**--In addition to the Board of Health Professions, the following boards are included within the Department: Board of Audiology and Speech-Language Pathology, Board of Dentistry, Board of Funeral Directors and Embalmers, Board of Medicine, Board of Nursing, Board of Nursing Home Administrators, Board of Optometry, Board of Pharmacy, Board of Professional Counselors, Board of Psychology, Board of Recreation Specialists, Board of Social Work and Board of Veterinary Medicine.

§ 54.1-2504. **Appointment of Director.**--The Director of the Department of Health Professions shall be appointed by the Governor, subject to confirmation by the General Assembly, to serve at the pleasure of the Governor.

§ 54.1-2505. **Powers and duties of Director of Department.**-- The Director of the Department shall have the following powers and duties:

1. To supervise and manage the Department;
2. To perform or consolidate such administrative services or functions as may assist the operation of the boards;
3. To prepare, approve and submit to the Governor, after consultation with the boards, all requests for appropriations and be responsible for all expenditures pursuant to appropriations;
4. To provide such office facilities as will allow the boards to carry out their duties;
5. To employ personnel as required for the proper performance of the responsibilities of the Department subject to Chapter 10 (§ 2.1-110 et seq.) of Title 2.1 within the limits of appropriations made by law;
6. To receive all complaints made against regulated health care professionals;
7. To develop administrative policies and procedures governing the receipt and recording of complaints;
8. To monitor the status of actions taken under the auspices of the boards regarding complaints until the closure of each case;
9. To provide investigative and such other services as needed by the boards to enforce their respective statutes and regulations;
10. To provide staff to assist in the performance of the duties of the Board of Health Professions;
11. To collect and account for all fees to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the regulatory boards, the Health Practitioners' Intervention Program, and the Department and Board of Health Professions shall be paid;
12. To make and enter into all contracts and agreements necessary or incidental to the performance of his duties and the execution of his powers, including, but not limited to, contracts with the United States, other states, agencies and governmental subdivisions of the Commonwealth;
13. To accept grants from the United States government, its agencies and instrumentalities, and any other source. The Director shall have the power to comply with conditions and execute agreements as may be necessary, convenient or desirable;
14. To promulgate and revise regulations necessary for the administration of the Department and such regulations as are necessary for the implementation of the Health Practitioners' Intervention Program pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of this title and subdivision 19 of this section;
15. To report promptly, after consultation with the presiding officer of the appropriate health regulatory board or his designee, to the Attorney General or the appropriate attorney for the Commonwealth any information the Department obtains which, upon appropriate investigation, indicates, in the judgment of the Director, that a person licensed by any of the health regulatory boards has violated any provision of criminal law relating to manufacturing, distributing, dispensing, prescribing or administering drugs other than drugs classified as Schedule VI drugs. When necessary, the Attorney General or the attorney for the Commonwealth shall request that the Department of Health Professions or the Department of State Police conduct any subsequent investigation of such report. For the purpose of this section, the terms manufacturing, distributing, dispensing, prescribing or administering drugs shall not include minor administrative or clerical errors which do not affect the inventory of drugs required by Chapter 34 (§ 54.1-3400 et seq.) of this title and do not indicate a pattern of criminal behavior;
16. To keep records of the names and qualifications of registered, certified or licensed

persons;

17. To exercise other powers and perform other duties required of the Director by the Governor;

18. To issue subpoenas in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) for any informal fact finding or formal proceeding within the jurisdiction of the Department or any regulatory board; and

19. To establish, and revise as necessary, a comprehensive health practitioners' intervention program pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of this title.

**§ 54.1-2506. Enforcement of laws by Director and investigative personnel; authority of investigative personnel.**--The Director and investigative personnel appointed by him shall be sworn to enforce the statutes and regulations pertaining to the Department, the Board, and the health regulatory boards and shall have the authority to investigate any violations of those statutes and regulations and to the extent otherwise authorized by law inspect any office or facility operated, owned or employing individuals regulated by any health regulatory board. The Director or his designee shall have the power to subpoena witnesses and issue subpoenas requiring the production of patient records, business records, papers, and physical or other evidence in the course of any investigation.

All investigative personnel shall be vested with the authority to (i) administer oaths or affirmations for the purpose of receiving complaints of violations of this subtitle, (ii) serve and execute any warrant, paper or process issued by any court or magistrate, the Board, the Director or in his absence a designated subordinate, or by any regulatory board under the authority of the Director, and (iii) request and receive criminal history information under the provisions of § 19.2-389.

**§ 54.1-2506.1. Submission of required information.**

The Department is authorized to require individuals applying for initial licensure and individuals who are licensed to practice medicine, osteopathic medicine, dentistry, or to practice as a physician assistant, nurse practitioner or dental hygienist, to provide information in addition to that which is required to determine the individual's qualifications to be licensed. Such additional information shall identify the individual's specialty and subspecialty; credentials and certifications issued by professional associations, institutions and boards; and locations of practice and number of hours spent practicing at each practice location. Such information shall be collected and maintained by the Department for manpower planning purposes in cooperation with agencies and institutions of the Commonwealth and shall be released by the Department only in the aggregate without reference to any licensee's name or other individual identifying particulars. Prior to collecting any information described in this section from individual licensees, the Department shall first attempt to obtain from other sources information sufficient for manpower planning purposes.

**§ 54.1-2506.2. Protection of escrow funds, etc., held by persons licensed by any of the health regulatory boards.**--Whenever funds are held in escrow, in trust, or in some other fiduciary capacity by a person licensed by any of the health regulatory boards and the Director or investigative personnel appointed by him have reason to believe that such person is not able or is unwilling to adequately protect such funds or the interest of any person therein, the Director may

file a petition with any court of record having equity jurisdiction over such person or any of the funds held by such person stating the facts upon which he relies. The court may temporarily enjoin further activity by such person and take such further action as shall be necessary to conserve, protect and disburse the funds involved, including the appointment of a receiver. If a receiver is appointed his expenses and a reasonable fee as determined by the court shall be paid by such person.

**§ 54.1-2507. Board of Health Professions; membership, appointments, and terms of office.**--The Board of Health Professions shall consist of one member from each health regulatory board appointed by the Governor, and five members to be appointed by the Governor from the Commonwealth at large. No member of the Board of Health Professions who represents a health regulatory board shall serve as such after he ceases to be a member of a board. The members appointed by the Governor shall be subject to confirmation by the General Assembly and shall serve for four-year terms.

**§ 54.1-2508. Chairman; meetings of Board; quorum.**--The chairman of the Board of Health Professions shall be elected by the Board from its members. The Board shall meet at least once quarterly and may hold additional meetings as necessary to perform its duties. A majority of the Board shall constitute a quorum for the conduct of business.

**§ 54.1-2509. Reimbursement of Board members for expenses.**--All members of the Board shall be compensated in accordance with § 2.1-20.3 from the funds of the Department.

**§ 54.1-2510. Powers and duties of Board of Health Professions.**--The Board of Health Professions shall have the following powers and duties:

1. To evaluate the need for coordination among the health regulatory boards and their staffs and report its findings and recommendations to the Director and the boards;
2. To evaluate all health care professions and occupations in the Commonwealth, including those regulated and those not regulated by other provisions of this title, to consider whether each such profession or occupation should be regulated and the degree of regulation to be imposed. Whenever the Board determines that the public interest requires that a health care profession or occupation which is not regulated by law should be regulated, the Board shall recommend to the General Assembly a regulatory system to establish the appropriate degree of regulation;
3. To review and comment on the budget for the Department;
4. To provide a means of citizen access to the Department;
5. To provide a means of publicizing the policies and programs of the Department in order to educate the public and elicit public support for Department activities;
6. To monitor the policies and activities of the Department, serve as a forum for resolving conflicts among the health regulatory boards and between the health regulatory boards and the Department and have access to departmental information;
7. To advise the Governor, the General Assembly and the Director on matters relating to the regulation or deregulation of health care professions and occupations;
8. To make bylaws for the government of the Board of Health Professions and the proper fulfillment of its duties under this chapter;

9. To promote the development of standards to evaluate the competency of the professions and occupations represented on the Board;
10. To review and comment, as it deems appropriate, on all regulations promulgated or proposed for issuance by the health regulatory boards under the auspices of the Department. At least one member of the relevant board shall be invited to be present during any comments by the Board on proposed board regulations;
11. To review periodically the investigatory, disciplinary and enforcement processes of the Department and the individual boards to ensure the protection of the public and the fair and equitable treatment of health professionals;
12. To examine scope of practice conflicts involving regulated and unregulated professions and advise the health regulatory boards and the General Assembly of the nature and degree of such conflicts;
13. To receive, review, and forward to the appropriate health regulatory board any departmental investigative reports relating to complaints of violations by practitioners of Chapter 24.1 (§ 54.1-2410 et seq.) of this subtitle;
14. To determine compliance with and violations of and grant exceptions to the prohibitions set forth in Chapter 24.1 (§ 54.1-2410 et seq.) of this subtitle; and
15. To take appropriate actions against entities, other than practitioners, for violations of Chapter 24.1 (§ 54.1-2410 et seq.) of this subtitle.

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CHAPTER 25.1.

**HEALTH PRACTITIONERS' INTERVENTION PROGRAM.**

§ 54.1-2515. **Definitions.**— As used in this chapter, unless the context requires a different meaning:

"*Contract*" means a written agreement between a practitioner and the Intervention Program Committee providing the terms and conditions of program participation or a written agreement entered into by the Director for the implementation of intervention services.

"*Disciplinary action*" means any proceeding which may lead to a fine, probation, or to reprimand, restriction, revocation, suspension, denial or other order relating to the license, certificate or registration of a health care practitioner by a health regulatory board.

"*Impairment*" means a physical or mental disability, including, but not limited to substance abuse, that substantially alters the ability of a practitioner to practice his profession with safety to his patients and the public.

"*Intervention Program Committee*" means the seven-member group of licensed, certified or registered practitioners appointed by the Director to supervise the operation of the program, at least one of whom shall be licensed to practice medicine or osteopathy in Virginia and who shall be engaged in active clinical practice. All members of the Committee shall be knowledgeable about impairment and rehabilitation, particularly as related to health care practitioners.

"*Practitioner*" means any individual regulated by any health regulatory board listed in § 54.1-2503.

**§ 54.1-2516. Program established; practitioner participation; disciplinary action stayed under certain conditions**

A. By January 1, 1998, the Director of the Department of Health Professions shall establish a comprehensive health practitioners' intervention program, providing an alternative to disciplinary action. The Director shall promulgate such regulations as are necessary for the implementation of this program after consulting with the various health regulatory boards.

The Director may, in consultation and coordination with the Intervention Program Committee, enter into contracts as may be necessary for the implementation of intervention services. Such services may include education, intervention, assessment, referral, and monitoring of impaired practitioners.

When evaluating such contracts, the Director shall consider the utilization of programs, as appropriate, that have been established by professional organizations for peer assistance of impaired practitioners.

The Program's operating costs, including any contractual obligations for services, shall be funded by special dedicated revenues consistent with the provisions of §§ 54.1-113, 54.1-2400, and 54.1-2505.

Any intervention program for individuals licensed or certified by the Board of Medicine, and any contract for the implementation of intervention services with respect to any such individuals, shall be subject to the prior approval of that Board.

B. Any health practitioner who has an impairment as defined in this chapter, may, on a voluntary

basis, participate in the Program regardless of whether the impairment constitutes grounds for disciplinary action.

C. Disciplinary action shall be stayed upon entry of the practitioner in the Program under the following conditions:

1. No report of a possible violation of law or regulation has been made against the practitioner other than impairment or the diversion of controlled substances for personal use and such use does not constitute a danger to patients or clients.

2. The practitioner has entered the Program by written contract with the Intervention Program Committee.

3. Disciplinary action against the practitioner has not previously been stayed in accordance with this section.

4. The practitioner remains in compliance with such terms, testing, treatment and other conditions as may be specified in the contract with the Intervention Program Committee.

5. The Intervention Program Committee has consulted with the designated representative of the relevant health regulatory board.

**§ 54.1-2517. Powers and duties of the Intervention Program Committee; certain meetings, decisions to be excepted from the Freedom of Information Act; confidentiality of records; immunity from liability.**

A. The Intervention Program Committee shall have the following powers and duties:

1. To determine, in accordance with the regulations, eligibility to enter into the Program;

2. To determine, in accordance with the regulations, those Program participants who are eligible for stayed disciplinary action;

3. To enter into written contracts with practitioners which may include, among other terms and conditions, withdrawal from practice or limitations on the scope of the practice for a period of time;

4. To report to the Director and the health regulatory boards as necessary on the status of applicants for and participants in the Program; and

5. To report to the Director, at least annually, on the performance of the Program.

B. Records of the Intervention Program Committee, to the extent such records identify individual practitioners in the intervention program, shall be privileged and confidential, and shall not be disclosed consistent with the Virginia Freedom of Information Act (§ 2.1-340 et seq.). Such records shall be used by the Committee only in the exercise of the proper functions of the Committee as set forth in this chapter and shall not be public records nor shall such records be subject to court order, except as provided in subdivision C 4 below, or be subject to discovery or introduction as evidence in any civil, criminal, or administrative proceedings except those conducted by a health regulatory board.

C. Notwithstanding the provisions of subsection B above and of subdivision B 67 of § 2.1-342, the Committee may disclose such records relative to an impaired practitioner only:

1. When disclosure of the information is essential to the intervention, treatment or rehabilitation needs of the impaired practitioner;

2. When release of the information has been authorized in writing by the impaired practitioner;

3. To a health regulatory board within the Department of Health Professions; or

4. When an order by a court of competent jurisdiction has been granted, upon a showing of good cause therefor, including the need to avert a substantial risk of death or serious bodily harm. In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate protections against unauthorized disclosures.

D. Pursuant to subdivision A 26 of § 2.1-344, the proceedings of the Committee which in any way pertain or refer to a specific practitioner who may be, or who is actually, impaired and who may be or is, by reason of such impairment, subject to disciplinary action by the relevant board shall be excluded from the requirements of the Freedom of Information Act (§ 2.1-340 et seq.) and may be closed. Such proceedings shall be privileged and confidential.

E. The members of the Committee shall be immune from liability resulting from the exercise of the powers and duties of the Committee as provided in § 8.01-581.13.

**§ 54.1-2517. Powers and duties of the Intervention Program Committee; certain meetings, decisions to be excepted from the Freedom of Information Act; confidentiality of records; immunity from liability.**

A. The Intervention Program Committee shall have the following powers and duties:

1. To determine, in accordance with the regulations, eligibility to enter into the Program;
2. To determine, in accordance with the regulations, those Program participants who are eligible for stayed disciplinary action;
3. To enter into written contracts with practitioners which may include, among other terms and conditions, withdrawal from practice or limitations on the scope of the practice for a period of time;
4. To report to the Director and the health regulatory boards as necessary on the status of applicants for and participants in the Program; and
5. To report to the Director, at least annually, on the performance of the Program.

B. Records of the Intervention Program Committee, to the extent such records identify individual practitioners in the intervention program, shall be privileged and confidential, and shall not be disclosed consistent with the Virginia Freedom of Information Act (§ 2.1-340 et seq.). Such records shall be used by the Committee only in the exercise of the proper functions of the Committee as set forth in this chapter and shall not be public records nor shall such records be subject to court order, except as provided in subdivision C 4 below, or be subject to discovery or introduction as evidence in any civil, criminal, or administrative proceedings except those conducted by a health regulatory board.

C. Notwithstanding the provisions of subsection B above and of subdivision B 67 of § 2.1-342, the Committee may disclose such records relative to an impaired practitioner only:

1. When disclosure of the information is essential to the intervention, treatment or rehabilitation needs of the impaired practitioner;
2. When release of the information has been authorized in writing by the impaired

practitioner;

3. To a health regulatory board within the Department of Health Professions; or

4. When an order by a court of competent jurisdiction has been granted, upon a showing of good cause therefor, including the need to avert a substantial risk of death or serious bodily harm. In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate protections against unauthorized disclosures.

D. Pursuant to subdivision A 26 of § 2.1-344, the proceedings of the Committee which in any way pertain or refer to a specific practitioner who may be, or who is actually, impaired and who may be or is, by reason of such impairment, subject to disciplinary action by the relevant board shall be excluded from the requirements of the Freedom of Information Act (§ 2.1-340 et seq.) and may be closed. Such proceedings shall be privileged and confidential.

E. The members of the Committee shall be immune from liability resulting from the exercise of the powers and duties of the Committee as provided in § 8.01-581.13.

**§ 54.1-2518. Investigation by Department or other authorized official; prosecution for violations of law.**—This chapter shall not be construed to inhibit an investigation into the conduct of a practitioner by the Department of Health Professions or any other authorized agency, including, but not limited to, law-enforcement or health regulatory agencies, or to prohibit the prosecution of any practitioner for any violation of law.

**§ 54.1-2906. Hospitals and other health care institutions required to report disciplinary actions against and certain disorders of health professionals; immunity from liability**

A. The chief administrative officer and the chief of staff of every hospital or other health care institution in the Commonwealth shall report to the appropriate board the following information regarding any person licensed by a health regulatory board unless exempted under subsection D:

1. Any information of which he may become aware in his official capacity indicating that such a health professional is in need of treatment or has been committed or admitted as a patient, either at his institution or at any other health care institution, for treatment of substance abuse or a psychiatric illness which may render the health professional a danger to himself, the public or his patients.
2. Any information of which he may become aware in his official capacity indicating that such health professional may be guilty of unethical, fraudulent or unprofessional conduct as defined by the pertinent licensing statutes and regulations.
3. Any disciplinary action, including but not limited to denial or termination of employment, denial or termination of privileges or restriction of privileges, while under investigation or during disciplinary proceedings, taken or begun by the institution as a result of conduct involving professional ethics, professional incompetence, moral turpitude, or substance abuse.
4. The voluntary resignation from the staff of the health care institution or voluntary restriction or expiration of privileges at the institution of any health professional while such health professional is under investigation or is the subject of disciplinary

proceedings taken or begun by the institution or a committee thereof for any reason related to possible medical incompetence, unprofessional conduct, moral turpitude, mental or physical impairment, or substance abuse.

Any report required by this section shall be in writing directed to the secretary of 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. Any report required by this section concerning the commitment or admission of such health professional as a patient shall be made within five days of when the chief administrative officer learns of such commitment or admission.

The provisions of § 8.01-581.17 shall not bar (i) any initial report required by this section or (ii) any requested medical records which are necessary to investigate unprofessional conduct reported pursuant to this subtitle or unprofessional conduct that should have been reported pursuant to this subtitle.

B. The State Health Commissioner shall report to the appropriate board any information of which the Department of Health may become aware in the course of its duties indicating that such a health professional may be guilty of fraudulent, unethical or unprofessional conduct as defined by the pertinent licensing statutes and regulations.

C. 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.

D. Medical records or information learned or maintained in connection with an alcohol or drug 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), or regulations promulgated thereunder.

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

A. Every practitioner in the Commonwealth licensed or certified by a health regulatory board who treats professionally any person licensed 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 treated for mental 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.

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 42 U.S.C. § 290dd-2 or regulations promulgated thereunder.

**§ 54.1-2969. (For effective date - See note) Authority to consent to surgical and medical treatment of certain minors.**

A. Whenever any minor who has been separated from the custody of his parent or guardian is in need of surgical or medical treatment, authority commensurate with that of a parent in like cases is conferred, for the purpose of giving consent to such surgical or medical treatment, as follows:

1. Upon judges with respect to minors whose custody is within the control of their respective courts.
2. Upon local superintendents of public welfare or social services or their designees with respect to (i) minors who are committed to the care and custody of the local board by courts of competent jurisdiction, (ii) minors who are taken into custody pursuant to § 63.1-248.9 and (iii) minors who are entrusted to the local board by the parent, parents or guardian, when the consent of the parent or guardian cannot be obtained immediately and, in the absence of such consent, a court order for such treatment cannot be obtained immediately.
3. Upon the Director of the Department of Corrections or the Director of the Department of Youth and Family Services or his designees with respect to any minor who is sentenced or committed to his custody.
4. Upon the principal executive officers of state institutions with respect to the wards of such institutions.
5. Upon the principal executive officer of any other institution or agency legally qualified to receive minors for care and maintenance separated from their parents or guardians, with respect to any minor whose custody is within the control of such institution or agency.
6. Upon any person standing in loco parentis, or upon a conservator or custodian for his ward or other charge under disability.

B. Whenever the consent of the parent or guardian of any minor who is in need of surgical or medical treatment is unobtainable because such parent or guardian is not a resident of this Commonwealth or his whereabouts is unknown or he cannot be consulted with promptness reasonable under the circumstances, authority commensurate with that of a parent in like cases is conferred, for the purpose of giving consent to such surgical or medical treatment, upon judges of juvenile and domestic relations district courts.

C. Whenever delay in providing medical or surgical treatment to a minor may adversely affect such minor's recovery and no person authorized in this section to consent to such treatment for such minor is available within a reasonable time under the circumstances, no liability shall be imposed upon a licensed health professional or licensed hospital by reason of lack of consent to such medical or surgical treatment. However, in the case of a minor fourteen years of age or older who is physically capable of giving consent, such consent shall be obtained first.

D. A minor shall be deemed an adult for the purpose of consenting to:

1. Medical or health services needed to determine the presence of or to treat venereal disease or any infectious or contagious disease which the State Board of Health requires

to be reported;

2. Medical or health services required in case of birth control, pregnancy or family planning except for the purposes of sexual sterilization;
3. Medical or health services needed in the case of outpatient care, treatment or rehabilitation for substance abuse as defined in § 37.1-203;
4. Medical or health services needed in the case of outpatient care, treatment or rehabilitation for mental illness or emotional disturbance.

E. Except for the purposes of sexual sterilization, any minor who is or has been married shall be deemed an adult for the purpose of giving consent to surgical and medical treatment.

F. Any minor seventeen years of age may, with the consent of a parent or legal guardian, consent to donate blood and may donate blood if such minor meets donor eligibility requirements. However, parental consent to donate blood by any minor seventeen years of age shall not be required if such minor receives no consideration for his blood donation and the procurer of the blood is a nonprofit, voluntary organization.

G. Any judge, local superintendent of public welfare or social services, Director of the Department of Corrections, Director of the Department of Youth and Family Services, or principal executive officer of any state or other institution or agency who consents to surgical or medical treatment of a minor in accordance with this section shall make a reasonable effort to notify the minor's parent or guardian of such action as soon as practicable.

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CHAPTER 35.

PROFESSIONAL COUNSELING.

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ARTICLE 1.

*General Provisions.*

PROFESSIONAL COUNSELING AND MARRIAGE AND FAMILY THERAPY

§ 54.1-3500. **Definitions.**--As used in this chapter, unless the context requires a different meaning:

*"Appraisal activities"* means the exercise of professional judgment based on observations and objective assessments of a client's behavior to evaluate current functioning, diagnose, and select appropriate treatment required to remediate identified problems or to make appropriate referrals.

*"Board"* means the Board of Licensed Professional Counselors, Marriage and Family Therapists, and Substance Abuse Professionals.

*"Certified substance abuse counselor"* means a person certified to provide substance abuse counseling in a state-approved public or private substance abuse program or facility.

*"Counseling"* means the therapeutic process of: (i) conducting assessments and diagnoses for the purpose of establishing treatment goals and objectives and (ii) planning, implementing, and evaluating treatment plans using treatment interventions to facilitate human development and to identify and remediate mental, emotional or behavioral disorders and associated distresses which interfere with mental health.

*"Counseling treatment intervention"* means those cognitive, affective, behavioral and systemic counseling strategies, techniques and methods common to the behavioral sciences that are specifically implemented in the context of a therapeutic relationship. Other treatment interventions include developmental counseling, guidance, and consulting to facilitate normal growth and development, including educational and career development.

*"Licensed substance abuse treatment practitioner"* means a person who: (i) is trained in and engages in the practice of substance abuse treatment with individuals or groups of individuals suffering from the effects of substance abuse or dependence, and in the prevention of substance abuse or dependence; and (ii) is licensed to provide advanced substance abuse treatment and independent, direct and unsupervised treatment to such individuals or groups of individuals, and to plan, evaluate, supervise, and direct substance abuse treatment provided by others.

*"Marriage and family therapist"* means a person trained in the assessment and treatment of cognitive, affective, or behavioral mental and emotional disorders within the context of marriage and family systems through the application of therapeutic and family systems theories and techniques.

*"Marriage and family therapy"* means the assessment and treatment of cognitive,

affective, or behavioral mental and emotional disorders within the context of marriage and family systems through the application of therapeutic and family systems theories and techniques and delivery of services to individuals, couples, and families, singularly or in groups, for the purpose of treating such disorders.

*"Practice of counseling"* means 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 counseling profession, which shall include appraisal, counseling, and referral activities.

*"Practice of marriage and family therapy"* means the assessment and treatment of cognitive, affective, or behavioral mental and emotional disorders within the context of marriage and family systems through the application of therapeutic and family systems theories and techniques, which shall include assessment, treatment, and referral activities.

*"Practice of substance abuse treatment"* means rendering or offering to render substance abuse treatment to individuals, groups, organizations, or the general public.

*"Professional counselor"* means a person trained in counseling interventions designed to facilitate an individual's achievement of human development goals and remediating mental, emotional, or behavioral disorders and associated distresses which interfere with mental health and development.

*"Referral activities"* means the evaluation of data to identify problems and to determine advisability of referral to other specialists.

*"Substance abuse"* and *"substance dependence"* mean a maladaptive pattern of substance use leading to clinically significant impairment or distress.

*"Substance abuse treatment"* means (i) the application of specific knowledge, skills, substance abuse treatment theory and substance abuse treatment techniques to define goals and develop a treatment plan of action regarding substance abuse or dependence prevention, education or treatment in the substance abuse or dependence recovery process and (ii) referrals to medical, social services, psychological, psychiatric or legal resources when such referrals are indicated.

**§ 54.1-3501. Exemption from requirements of licensure.--**The requirements for licensure 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, including persons acting as members of substance abuse self-help groups, 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 person licensed under this chapter.

2. The activities or services of a student pursuing a course of study in counseling, substance abuse treatment or marriage and family therapy in an institution accredited by an accrediting agency recognized by the Board or under the supervision of a person licensed or certified under this chapter, if such activities or services constitute a part of the student's course of study and are adequately supervised.

3. The activities, including marriage and family therapy, counseling, or substance abuse treatment, 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. Any person who renders psychological services, as defined in Chapter 36 (§ 54.1-3600 et seq.) of this title, shall be subject to the requirements of that chapter. Any person who, in addition to the above enumerated employment, engages in an independent private practice shall not be exempt from the requirements for licensure.

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. Persons regulated by this Board as professional counselors or persons regulated by another board within the Department of Health Professions who provide, within the scope of their practice, marriage and family therapy, counseling or substance abuse treatment to individuals or groups.

**§ 54.1-3503. Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals.**--The Board of Licensed Professional Counselors, Marriage and Family Therapists, and Substance Abuse Treatment Professionals shall regulate the practice of counseling, substance abuse treatment, and marriage and family therapy.

The Board shall consist of fourteen members. Twelve shall be professionals licensed in Virginia, who shall represent the various specialties recognized in the profession, and two shall be citizen members. Of the twelve professional members, eight shall be professional counselors, two shall be marriage and family therapists, and two shall be licensed substance abuse treatment practitioners. The professional members of the Board shall include two full-time faculty members engaged in teaching counseling, substance abuse treatment or marriage and family therapy in an accredited college or university in this Commonwealth, and two professional counselors engaged in full-time private practice. However, the marriage and family therapists initially appointed to the Board shall not be required to be licensed, shall not be licensed by another board in the Department of Health Professions, and shall be clinical members of the American Association for Marriage and Family Therapy. The licensed substance abuse treatment practitioners initially appointed to the Board shall not be required to be licensed, shall not be licensed by another board in the Department of Health Professions, shall be active members of the Virginia Association of Alcoholism and Drug Abuse Counselors and shall have a master's degree in substance abuse or a substantially equivalent master's degree.

The terms of the members of the Board shall be four years.

**§ 54.1-3504. 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 Counselors Association, the Virginia Association of Clinical Counselors, the Virginia Association of Alcoholism and Drug Abuse Counselors, and the Virginia Association for Marriage and Family Therapy. 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.

**§ 54.1-3505. Specific powers and duties of the Board.**--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 administer the certification of rehabilitation providers pursuant to Article 2 (§ 54.1-3510 et seq.) of this chapter, including prescribing fees for application processing, examinations, certification and certification renewal.

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. To promulgate regulations for the qualifications, education, and experience for licensure of marriage and family therapists. The requirements for clinical membership in the American Association for Marriage and Family Therapy (AAMFT), and the professional examination service's national marriage and family therapy examination may be considered by the Board in the promulgation of these regulations. The educational credit hour, clinical experience hour, and clinical supervision hour requirements for marriage and family therapists shall not be less than the educational credit hour, clinical experience hour, and clinical supervision hour requirements for professional counselors.

7. To promulgate, subject to the requirements of Article 1.1 (§ 54.1-3507 et seq.) of this chapter, regulations for the qualifications, education, and experience for licensure of licensed substance abuse treatment practitioners. The requirements for membership in the National Association of Alcoholism and Drug Abuse Counselors and its national examination may be considered by the Board in the promulgation of these regulations. The educational credit hour, clinical experience hour, and clinical supervision hour requirements for licensed substance abuse treatment practitioners shall not be less than the educational credit hour, clinical experience hour, and clinical supervision hour requirements for licensed professional counselors.

**§ 54.1-3506. License required.**--In order to engage in the practice of counseling or marriage and family therapy or in the independent practice of substance abuse treatment, as defined in this chapter, it shall be necessary to hold a license; however, no license shall be required for the practice of marriage and family therapy or the independent practice of substance abuse treatment until six months after the effective date of regulations governing marriage and family therapy and substance abuse treatment, respectively, promulgated by the Board under subdivisions 6 and 7 of § 54.1-3505. The Board may issue a license, without examination, for the practice of marriage and family therapy or the independent practice of substance abuse treatment to persons who hold a current and unrestricted license as a professional counselor within the Commonwealth and who meet the clinical and academic requirements for licensure as a marriage and family therapist or licensed substance abuse treatment practitioner, respectively. The applicant for such license shall present satisfactory evidence of qualifications equal to those required of applicants for licensure as marriage and family therapists or licensed substance abuse treatment practitioners, respectively, by examination in the Commonwealth.

Any person who renders substance abuse treatment services as defined in this chapter and who is not licensed to do so, other than a person who is exempt pursuant to § 54.1-3501, shall render such services only when he is (i) under the supervision and direction of a person licensed under this chapter who shall be responsible for the services performed by such unlicensed person, or (ii) in compliance with the regulations governing an organization or a facility licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

**§ 54.1-3507. Scope of practice of and qualifications for licensed substance abuse treatment practitioners.**

A. A licensed substance abuse treatment practitioner shall be qualified to (i) perform on an independent basis the substance abuse treatment functions of screening, intake, orientation, assessment, treatment planning, treatment, case management, substance abuse or dependence crisis intervention, client education, referral activities, recordkeeping, and consultation with other professionals; (ii) exercise independent professional judgment, based on observations and objective assessments of a client's behavior, to evaluate current functioning, to diagnose and select appropriate remedial treatment for identified problems, and to make appropriate referrals; and (iii) supervise, direct and instruct others who provide substance abuse treatment.

B. Pursuant to regulations adopted by the Board, an applicant for a license as a licensed substance abuse treatment practitioner shall submit evidence satisfactory to the Board that the applicant has (i) completed a specified number of hours of graduate studies, including a specified number of didactic substance abuse education courses at, and has received a master's degree in substance abuse or a substantially equivalent master's degree from, a college or university accredited by an accrediting agency recognized by the Board; and (ii) completed a specified number of hours of experience involving the practice of substance abuse treatment supervised by a licensed substance abuse treatment practitioner, or by another person with substantially equivalent education, training and experience. The applicant shall also pass an examination, as required by the Board.

**§ 54.1-3508. Licensure of certain persons possessing substantially equivalent qualifications, education or experience.**--Notwithstanding the provisions of § 54.1-3507, the Board may issue a license as a licensed substance abuse treatment practitioner to a person who, after the effective date of the regulations promulgated pursuant to subdivision 7 of § 54.1-3505, has applied for such a license and who, in the judgment of the Board, possesses qualifications, education or experience substantially equivalent to the requirements of § 54.1-3507; however, any such applicant shall have completed at least one year of supervised clinical experience in substance abuse treatment.

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## ARTICLE 2.

### *Advisory Board on Rehabilitation Providers.*

§ 54.1-3510. **Definitions**--As used in this article, unless the context requires a different meaning:

"*Advisory Board*" means the Advisory Board on Rehabilitation Providers.

"*Certified rehabilitation provider*" means a person who is certified by the Board as possessing the training, the skills and the experience as a rehabilitation provider to form an opinion by discerning and evaluating, thereby allowing for a sound and reasonable determination or recommendation as to the appropriate employment for a rehabilitation client and who may provide vocational rehabilitation services under subdivision A 3 of § 65.2-603 that involve the exercise of professional judgment.

"*Professional judgment*" includes consideration of the client's level of disability, functional limitations and capabilities; consideration of client aptitudes, vocational skills and abilities; education and pre-injury employment; and identification of return-to-work options and service needs which culminate in the determination or recommendation of appropriate employment for the rehabilitation client.

§ 54.1-3511. **Advisory Board on Rehabilitation Providers**--The Advisory Board shall consist of ten members. One member each shall be appointed by the Boards of Medicine, Nursing, Professional Counselors, Psychology, and Social Work from their respective membership. The Board of Health Professions shall appoint the remaining five members, two of whom shall be members of other boards referred to in § 54.1-2503 and three of whom shall be certified under this act as rehabilitation providers, except that the rehabilitation providers initially appointed to the board shall not be required to be certified. Members shall serve four-year terms, except that the term of any member who is a member of a board referred to in § 54.1-2503 shall expire contemporaneous with the expiration of his term on such board. Vacancies shall be filled in the same manner as original appointments.

### § 54.1-3512. **Powers and duties of Advisory Board.**

A. The Advisory Board shall:

1. Recommend to the Boards of Medicine, Nursing, Professional Counselors, Psychology, and Social Work regulatory criteria for the voluntary certification of their licensees who provide rehabilitation services and for standards of conduct of licensees so certified.
2. Recommend to the Board of Professional Counselors regulatory criteria for certification and for standards of professional conduct of persons who provide rehabilitative services but who are exempt from licensure as professional counselors under subdivision 1 of § 54.1-3501.
3. Assist the Boards of Medicine, Nursing, Professional Counselors, Psychology, and Social Work in all matters pertaining to rehabilitation services as they may request.

B. The criteria for certification and standards of professional conduct recommended by the Advisory Board shall be only those it finds to be necessary and appropriate to protect the

public interest. The Boards of Medicine, Nursing, Professional Counselors, Psychology, and Social Work may modify recommended criteria and standards as necessary to make them consistent with regulations applicable to its licensees.

**§ 54.1-3513. Restriction of practice; use of titles.**

- A. No person, other than a person licensed by the Boards of Medicine, Nursing, Optometry, Professional Counselors, Psychology, or Social Work, shall hold himself out as a provider of rehabilitation services or use the title "rehabilitation provider" or a similar title or any abbreviation thereof unless he holds a valid certificate under this article.
- B. This section shall not apply to employees or independent contractors of the Commonwealth's agencies and sheltered workshops providing vocational rehabilitation services, provided such employees or independent contractors are not providing vocational rehabilitation services under § 65.2-603.

**§ 54.1-3514. Certification of existing providers.**—The Board of Professional Counselors, upon receipt of a completed application and payment of the prescribed fee on or before June 30, 1995, shall issue a certificate to any person who was actively engaged in providing rehabilitation services on January 1, 1994.

**§ 54.1-3515. Certification renewal of individuals who became certified under the provisions of § 54.1-3514.**

After July 1, 2000, the Board of Professional Counselors and Marriage and Family Therapists shall not renew a certificate to any person who became certified under the provisions of § 54.1-3514 without documentation that such person meets the current requirements for certification established by the Board. The Board of Professional Counselors and Marriage and Family Therapists, pursuant to its authority in this section and in § 54.1-3505, shall adopt regulations to implement the 1997 revisions of the law relating to certified rehabilitation providers in 280 days or less of the date of the enactment of such revisions.

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## LAWS, PUBLIC RECORDS AND COPIES OF ORIGINAL RECORDS AS EVIDENCE

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**§ 8.01-400.2. Communications between counselors, social workers and psychologists and clients.**—Except at the request of or with the consent of the client, no licensed professional counselor, as defined in § 54.1-3500, licensed clinical social worker, as defined in § 54.1-3700, or licensed psychologist, as defined in § 54.1-3600, shall be required in giving testimony as a witness in any civil action to disclose any information communicated to him in a confidential manner, properly entrusted to him in his professional capacity and necessary to enable him to discharge his professional or occupational services according to the usual course of his practice or discipline, wherein such person so communicating such information about himself or another is seeking professional counseling or treatment and advice relative to and growing out of the information so imparted; provided, however, that when the physical or mental condition of the client is at issue in such action, or when a court, in the exercise of sound discretion, deems such disclosure necessary to the proper administration of justice, no fact communicated to, or otherwise learned by, such practitioner in connection with such counseling, treatment or advice shall be privileged, and disclosure may be required. The privileges conferred by this section shall not extend to testimony in matters relating to child abuse and neglect nor serve to relieve any person from the reporting requirements set forth in § 63.1-248.3.

**§ 8.01-413. Certain copies of health care provider's records or papers of patient admissible; right of patient or his attorney to copies of such records or papers; subpoena; damages, costs and attorney's fees.**

A. In any case where the hospital, nursing facility, physician's, or other health care provider's original records or papers of any patient in a hospital or institution for the treatment of physical or mental illness are admissible or would be admissible as evidence, any typewritten copy, photograph, photostatted copy, or microphotograph or printout or other hard copy generated from computerized or other electronic storage, microfilm, or other photographic, mechanical, electronic or chemical storage process thereof shall be admissible as evidence in any court of this Commonwealth in like manner as the original, if the printout or hard copy or microphotograph or photograph is properly authenticated by the employees having authority to release or produce the original records.

Any hospital, nursing facility, physician, or other health care provider whose records or papers relating to any such patient are subpoenaed for production under this section or the Rules of the Supreme Court of Virginia may comply with the subpoena by a timely mailing to the clerk issuing the subpoena properly authenticated copies, photographs or microphotographs in lieu of the originals. The court whose clerk issued the subpoena may, after notice to such hospital, nursing facility, physician, or other health care provider, enter an order requiring production of the originals, if available, of any stored records or papers whose copies, photographs or microphotographs are not sufficiently legible. The party requesting the subpoena shall be liable for the reasonable charges of the hospital, nursing facility, physician, or other health care provider for the service of maintaining, retrieving, reviewing, preparing, copying and mailing the items produced. Except for copies of X-ray photographs, however, such charges shall not exceed fifty cents for each page up to fifty pages and twenty-five cents a page thereafter for copies from paper

and one dollar per page for copies from microfilm or other micrographic process, plus all postage and shipping costs and a search and handling fee not to exceed ten dollars.

B. Copies of hospital, nursing facility, physician's, or other health care provider's records or papers shall be furnished within fifteen days of such request to the patient or his attorney upon such patient's or attorney's written request, which request shall comply with the requirements of § 32.1-127.1:03. However, copies of a patient's records shall not be furnished to such patient where the patient's treating physician has made a part of the patient's records a written statement that in his opinion the furnishing to or review by the patient of such records would be injurious to the patient's health or well-being, but in any such case such records shall be furnished to the patient's attorney within fifteen days of the date of such request. A reasonable charge may be made for the service of maintaining, retrieving, reviewing and preparing such copies. Except for copies of X-ray photographs, however, such charges shall not exceed fifty cents per page for up to fifty pages and twenty-five cents a page thereafter for copies from paper and one dollar per page for copies from microfilm or other micrographic process, plus all postage and shipping costs and a search and handling fee not to exceed ten dollars. Any hospital, nursing facility, physician, or other health care provider receiving such a request from a patient's attorney shall require a writing signed by the patient confirming the attorney's authority to make the request.

C. Upon the failure of any hospital, nursing facility, physician, or other health care provider to comply with any written request made in accordance with subsection B within the period of time specified in that subsection and within the manner specified in § 32.1-127.1:03, the patient or his attorney may by affidavit filed with the clerk of the circuit court wherein any eventual suit, if any, would be required to be filed, upon payment of the fees required by subdivision (23) of § 14.1-112, and fees for service, request that the clerk subpoena such records or papers. The clerk shall thereupon issue a subpoena, returnable within twenty days of proper service, directing the hospital, nursing facility, physician, or other health care provider to produce and furnish copies of the reports and papers to him, whereupon, the clerk shall make the same available to the patient or his attorney. If the court finds that a hospital, nursing facility, physician, or other health care provider willfully refused to comply with a written request made in accordance with subsection B, either by willfully or arbitrarily refusing or by imposing a charge in excess of the reasonable expense of making the copies and processing the request for records, the court may award damages for all expenses incurred by the patient to obtain such copies, including court costs and reasonable attorney's fees.

D. The provisions of subsections A, B, and C hereof shall apply to any health care provider whose office is located within or without the Commonwealth if the records pertain to any patient who is a party to a cause of action in any court in the Commonwealth of Virginia, and shall apply only to requests made by an attorney, or his client, in anticipation of litigation or in the course of litigation.

E. Health care provider, as used in this section, shall have the same meaning as provided in § 32.1-127.1:03 and shall also include an independent medical copy retrieval service contracted to provide the service of retrieving, reviewing, and preparing such copies for distribution.

F. Notwithstanding the authorization to admit as evidence patient records in the form of microphotographs, prescription dispensing records maintained in or on behalf of any pharmacy registered or permitted in Virginia shall only be stored in compliance with §§ 54.1-3410, 54.1-3411 and 54.1-3412.

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## MEDICAL MALPRACTICE

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**§ 8.01-581.1. Definitions.**—As used in this chapter:

*"Health care"* means any act, or treatment performed or furnished, or which should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical diagnosis, care, treatment or confinement.

*"Health care provider"* means (i) a person, corporation, facility or institution licensed by this Commonwealth to provide health care or professional services as a physician or hospital, dentist, pharmacist, registered nurse or licensed practical nurse, optometrist, podiatrist, chiropractor, physical therapist, physical therapy assistant, clinical psychologist, clinical social worker, professional counselor, licensed dental hygienist or health maintenance organization, (ii) a professional corporation, all of whose shareholders or members are so licensed, (iii) a partnership, all of whose partners are so licensed, (iv) a nursing home as defined in § 54.1-3100 except those nursing institutions conducted by and for those who rely upon treatment by spiritual means alone through prayer in accordance with a recognized church or religious denomination, (v) a professional limited liability company comprised of members as described in § 13.1-1102 A 2, or an officer, employee or agent thereof acting in the course and scope of his employment, or (vi) a corporation, partnership, limited liability company or any other entity, except a state-operated facility, which employs or engages a licensed health care provider and which primarily renders health care services.

*"Health maintenance organization"* means any person licensed pursuant to Chapter 43 (§ 38.2-4300 et seq.) of Title 38.2 who undertakes to provide or arrange for one or more health care plans.

*"Hospital"* means a public or private institution licensed pursuant to Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 or Chapter 8 (§ 37.1-179 et seq.) of Title 37.1.

*"Impartial attorney"* means an attorney who has not represented (i) the claimant, his family, his partners, co-proprietors or his other business interests; or (ii) the health care provider, his family, his partners, co-proprietors or his other business interests.

*"Impartial health care provider"* means a health care provider who (i) has not examined, treated or been consulted regarding the claimant or his family; (ii) does not anticipate examining, treating, or being consulted regarding the claimant or his family; or (iii) has not been an employee, partner or co-proprietor of the health care provider against whom the claim is asserted.

*"Malpractice"* means any tort based on health care or professional services rendered, or which should have been rendered, by a health care provider, to a patient.

*"Physician"* means a person licensed to practice medicine or osteopathy in this Commonwealth pursuant to Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1.

"Patient" means any natural person who receives or should have received health care from a licensed health care provider except those persons who are given health care in an emergency situation which exempts the health care provider from liability for his emergency services in accordance with § 8.01-225.

**§ 32.1-127.1:03. Patient Health Records Privacy.**

A. There is hereby recognized a patient's right of privacy in the content of a patient's medical record. Patient records are the property of the provider maintaining them, and, except when permitted by this section or by another provision of state or federal law, no provider, or other person working in a health care setting, may disclose the records of a patient.

Patient records shall not be removed from the premises where they are maintained without the approval of the provider, except in accordance with a court order or subpoena consistent with § 8.01-413 C or with this section or in accordance with the regulations relating to change of ownership of patient records promulgated by a health regulatory board established in Title 54.1.

No third party to whom disclosure of patient records was made by a provider shall redisclose or otherwise reveal the records of a patient, beyond the purpose for which such disclosure was made, without first obtaining the patient's specific consent to such redisclosure. This redisclosure prohibition shall not, however, prevent any provider who receives records from another provider from making subsequent disclosures permitted under this section.

B. As used in this section:

"Agent" means a person who has been appointed as a patient's agent under a power of attorney for health care or an advance directive under the Health Care Decisions Act (§ 54.1-2981 et seq.)

"Guardian" means a court-appointed guardian of the person.

"Health services" includes but is not limited to examination, diagnosis, evaluation, treatment, pharmaceuticals, aftercare, habilitation or rehabilitation and mental health therapy of any kind.

"Parent" means a biological, adoptive or foster parent.

"Patient" means a person who is receiving or has received health services from a provider.

"Provider" shall have the same meaning as set forth in the definition of "health care provider" in § 8.01-581.1, except that state-operated facilities shall also be considered providers for the purposes of this section. Provider shall also include all persons who are licensed, certified, registered or permitted by any of the health regulatory boards within the Department of Health Professions, except persons regulated by the Board of Funeral Directors and Embalmers or the Board of Veterinary Medicine.

"Record" means any written, printed or electronically recorded material maintained by a provider in the course of providing health services to a patient concerning the patient and the services provided. "Record" also includes the substance of any communication made by a patient to a provider in confidence during or in connection with the provision of health services to a patient or information otherwise acquired by the provider about a patient in confidence and in connection with the provision of health services to the patient.

C. The provisions of this section shall not apply to any of the following:

1. The status of and release of information governed by §§ 65.2-604 and 65.2-607 of the Virginia Workers Compensation Act; or

2. Except where specifically provided herein, the records of minor patients.

D. Providers may disclose the records of a patient:

1. As set forth in subsection E of this section, pursuant to the written consent of the patient or in the case of a minor patient, his custodial parent, guardian or other person authorized to consent to treatment of minors pursuant to § 54.1-2969; also, in emergency cases or situations where it is impractical to obtain the patient's written consent, pursuant to the patient's oral consent for a provider to discuss the patient's records with a third party specified by the patient;

2. In compliance with a subpoena issued in accord with subsection H of this section, pursuant to court order upon good cause shown or in compliance with a subpoena issued pursuant to subsection C of § 8.01-413;

3. In accord with subsection F of § 8.01-399 including, but not limited to, situations where disclosure is reasonably necessary to establish or collect a fee or to defend a provider or the provider's employees or staff against any accusation of wrongful conduct; also as required in the course of an investigation, audit, review or proceedings regarding a provider's conduct by a duly authorized law-enforcement, licensure, accreditation, or professional review entity;

4. In testimony in accordance with §§ 8.01-399 and 8.01-400.2;

5. In compliance with the provisions of § 8.01-413;

6. As required or authorized by any other provision of law including contagious disease, public safety, and suspected child or adult abuse reporting requirements, including but not limited to those contained in §§ 32.1-36, 32.1-36.1, 32.1-40, 32.1-41, 32.1-276.5, 32.1-283, 32.1-283.1, 37.1-98.2, 53.1-40.10, 54.1-2403.3, 54.1-2906, 54.1-2907, 54.1-2966, 54.1-2966.1, 54.1-2967, 54.1-2968, 63.1-55.3 and 63.1-248.11;

7. Where necessary in connection with the care of the patient;

8. In the normal course of business in accordance with accepted standards of practice within the health services setting; however, the maintenance, storage, and disclosure of the mass of prescription dispensing records maintained in a pharmacy registered or permitted in Virginia shall only be accomplished in compliance with §§ 54.1-3410, 54.1-3411 and 54.1-3412;

9. When the patient has waived his right to the privacy of the medical records;

10. When examination and evaluation of a patient is undertaken pursuant to judicial or administrative law order, but only to the extent as required by such;

11. To the guardian ad litem in the course of a guardianship proceeding of an adult patient authorized under §§ 37.1-128.1, 37.1-128.2 and 37.1-132;

12. To the attorney appointed by the court to represent a patient in a civil commitment proceeding under § 37.1-67.3;

13. To the attorney and/or guardian ad litem of a minor patient who represents such minor in any judicial or administrative proceeding, provided that the court or administrative hearing officer has entered an order granting the attorney or guardian ad litem this right and such attorney or guardian ad litem presents evidence to the provider of such order;

14. With regard to the Court Appointed Special Advocate (CASA) program, a minor's records in accord with § 9-173.12;

15. To an agent appointed under a patient's power of attorney or to an agent or decision maker designated in a patient's advance directive for health care or to any other person consistent with the provisions of the Health Care Decisions Act (§ 54.1-2981 et seq.);

16. To third-party payors and their agents pursuant to the deemed consent provisions of §§ 37.1-226 and 37.1-227 when the patient has requested the provider to submit bills to the third-party

payor for payment under a contract or insurance policy;

17. As is necessary to support an application for receipt of health care benefits from a governmental agency or as required by an authorized governmental agency reviewing such application or reviewing benefits already provided;

18. Upon the sale of a medical practice as provided in § 54.1-2405; or upon a change of ownership or closing of a pharmacy pursuant to regulations of the Board of Pharmacy;

19. In accord with § 54.1-2400.1 B, to communicate a patient's specific and immediate threat to cause serious bodily injury or death of an identified or readily identifiable person;

20. To the patient, except as provided in subsections E and F of this section and subsection B of § 8.01-413;

21. In the case of substance abuse records when permitted by and in conformity with requirements of federal law found in 42 U.S.C. 290dd-2 and 42 C.F.R. Part 2;

22. In connection with the work of any entity established as set forth in § 8.01-581.16 to evaluate the adequacy or quality of professional services or the competency and qualifications for professional staff privileges; and

23. Records of a deceased or mentally incapacitated patient to the personal representative or executor of the deceased patient or the legal guardian or committee of the incompetent or incapacitated patient or if there is no such person appointed, to the following persons in the following order of priority: a spouse, an adult son or daughter, either parent, an adult brother or sister, or any other relative of the deceased patient in order of blood relationship.

E. Requests for copies of medical records shall (i) be in writing, dated and signed by the requester; (ii) identify the nature of the information requested; and (iii) include evidence of the authority of the requester to receive such copies and identification of the person to whom the information is to be disclosed. Within fifteen days of receipt of a request for copies of medical records, the provider shall do one of the following: (i) furnish such copies to any requester authorized to receive them; (ii) inform the requester if the information does not exist or cannot be found; (iii) if the provider does not maintain a record of the information, so inform the requester and provide the name and address, if known, of the provider who maintains the record; or (iv) deny the request (a) under subsection F, (b) on the grounds that the requester has not established his authority to receive such records or proof of his identity, or (c) as otherwise provided by law. Procedures set forth in this section shall apply only to requests for records not specifically governed by other provisions of this Code or of federal law.

F. Except as provided in subsection B of § 8.01-413, copies of a patient's records shall not be furnished to such patient or anyone authorized to act on the patient's behalf where the patient's attending physician or the patient's clinical psychologist has made a part of the patient's record a written statement that, in his opinion, the furnishing to or review by the patient of such records would be injurious to the patient's health or well-being. If any custodian of medical records denies a request for copies of records based on such statement, the custodian shall permit examination and copying of the medical record by another such physician or clinical psychologist selected by the patient, whose licensure, training and experience relative to the patient's condition is at least equivalent to that of the physician or clinical psychologist upon whose opinion the denial is based. The person or entity denying the request shall inform the patient of the patient's right to select another reviewing physician or clinical psychologist under this subsection who shall make a judgment as to whether to make the record available to the patient. Any record copied for review by

the physician or clinical psychologist selected by the patient shall be accompanied by a statement from the custodian of the record that the patient's attending physician or clinical psychologist determined that the patient's review of his record would be injurious to the patient's health or well-being.

G. A written consent to allow release of patient records may, but need not, be in the following form:

**CONSENT TO RELEASE OF CONFIDENTIAL HEALTH CARE INFORMATION**

Patient Name.....

Provider Name.....

Person, agency or provider to whom disclosure is to be made.....

Information or Records to be disclosed.....

As the person signing this consent, I understand that I am giving my permission to the above-named provider or other named third party for disclosure of confidential health care records. I also understand that I have the right to revoke this consent, but that my revocation is not effective until delivered in writing to the person who is in possession of my records. A copy of this consent and a notation concerning the persons or agencies to whom disclosure was made shall be included with my original records. The person who receives the records to which this consent pertains may not redisclose them to anyone else without my separate written consent unless such recipient is a provider who makes a disclosure permitted by law.

This consent expires on (date).....

Signature of Patient ..... Date .....

H. No party to an action shall request the issuance of a subpoena duces tecum for an opposing party's medical records unless a copy of the request for the subpoena is provided to opposing counsel or the opposing party if they are pro se, simultaneously with filing the request. No party to an action shall request the issuance of a subpoena duces tecum for the medical records of a nonparty witness unless a copy of the request for the subpoena is provided to the nonparty witness simultaneously with filing the request.

In instances where medical records being subpoenaed are those of a pro se party or nonparty witness, the party requesting the issuance of the subpoena shall deliver to the pro se party or nonparty witness together with the copy of the request for subpoena, a statement informing them of their rights and remedies. The statement shall include the following language and the heading shall be in boldface capital letters:

## NOTICE TO PATIENT

1. The attached Request for Subpoena means that (insert name of party requesting subpoena) has asked the court to issue a subpoena to your doctor or other health care providers (names of health care providers inserted here) requiring them to produce your medical records. Your doctor or other health care provider is required to respond by providing a copy of your medical records. If you believe your records should not be disclosed and object to their disclosure, you have the right to file a motion with the clerk of the court to quash the subpoena. You may contact the clerk's office to determine the requirements that must be satisfied when filing a motion to quash and you may elect to contact an attorney to represent your interest. If you elect to file a motion to quash, it must be filed as soon as possible before the provider sends out the records in response to the subpoena. If you elect to file a motion to quash, you must notify your doctor or other health care provider(s) that you are filing the motion so that the provider knows to send the records to the clerk of court in a sealed envelope or package for safekeeping while your motion is decided.

2. Any party filing a request for a subpoena duces tecum for a patient's medical records shall include a Notice to Providers in the same part of the request where the provider is directed where and when to return the records. Such notice shall be in boldface capital letters and shall include the following language:

### NOTICE TO PROVIDERS

IF YOU RECEIVE NOTICE THAT YOUR PATIENT HAS FILED A MOTION TO QUASH (OBJECTING TO) THIS SUBPOENA, OR IF YOU FILE A MOTION TO QUASH THIS SUBPOENA, SEND THE RECORDS ONLY TO THE CLERK OF THE COURT WHICH ISSUED THE SUBPOENA USING THE FOLLOWING PROCEDURE: PLACE THE RECORDS IN A SEALED ENVELOPE AND ATTACH TO THE SEALED ENVELOPE A COVER LETTER TO THE CLERK OF COURT WHICH STATES THAT CONFIDENTIAL HEALTH CARE RECORDS ARE ENCLOSED AND ARE TO BE HELD UNDER SEAL PENDING THE COURT'S RULING ON THE MOTION TO QUASH THE SUBPOENA. THE SEALED ENVELOPE AND THE COVER LETTER SHALL BE PLACED IN AN OUTER ENVELOPE OR PACKAGE FOR TRANSMITTAL TO THE COURT.

3. Health care providers shall provide a copy of all records as required by a subpoena duces tecum or court order for such medical records. If the health care provider has, however, actual receipt of notice that a motion to quash the subpoena has been filed or if the health care provider files a motion to quash the subpoena for medical records, then the health care provider shall produce the records to the clerk of the court issuing the subpoena, where the court shall place the records under seal until a determination is made regarding the motion to quash. The securely sealed envelope shall only be opened on order of the judge. In the event the court grants the motion to quash, the records shall be returned to the health care provider in the same sealed envelope in which they were delivered to the court. In the event that a judge orders the sealed envelope to be opened to review the records in camera, a copy of the judge's order shall accompany any records returned to the provider. The records returned to the provider shall be in a securely sealed envelope.

4. It is the duty of any party requesting a subpoena duces tecum for medical records to determine whether the patient whose records are sought is pro se or a nonparty. Any request for a subpoena duces tecum for the medical records of a nonparty or of a pro se party shall direct the provider (in boldface type) not to produce the records until ten days after the date on which the provider is served with the subpoena duces tecum and shall be produced no later than twenty days after the date of such service.

In the event that the individual whose records are being sought files a motion to quash the subpoena, the court shall decide whether good cause has been shown by the discovering party to compel disclosure of the patient's private records over the patient's objections. In determining whether good cause has been shown, the court shall consider (i) the particular purpose for which the information was collected; (ii) the degree to which the disclosure of the records would embarrass, injure, or invade the privacy of the individual; (iii) the effect of the disclosure on the individual's future health care; (iv) the importance of the information to the lawsuit or proceeding; and (v) any other relevant factor.

The provisions of this subsection have no application to subpoenas for medical records requested under § 8.01-413, or issued by a duly authorized administrative agency conducting an investigation, audit, review or proceedings regarding a provider's conduct. The provisions of this subsection apply to the medical records of both minors and adults.

A subpoena for substance abuse records must conform to the requirements of federal law found in 42 C.F.R. Part 2, Subpart E.

Providers may testify about the medical records of a patient in compliance with §§ 8.01-399 and 8.01-400.2.

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## CHILD ABUSE AND NEGLECT

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**§ 63.1-248.3. (For effective date - See note) Physicians, nurses, teachers, etc., to report certain injuries to children; penalty for failure to report.**

A. The following persons who, in their professional or official capacity, have reason to suspect that a child is an abused or neglected child, shall report the matter immediately, except as hereinafter provided, to the local department of the county or city wherein the child resides or wherein the abuse or neglect is believed to have occurred or to the Department of Social Services' toll-free child abuse and neglect hotline:

1. Any person licensed to practice medicine or any of the healing arts,
2. Any hospital resident or intern, and any person employed in the nursing profession,
3. Any person employed as a social worker,
4. Any probation officer,
5. Any teacher or other person employed in a public or private school, kindergarten or nursery school,
6. Any person providing full-time or part-time child care for pay on a regularly planned basis,
7. Any duly accredited Christian Science practitioner,
8. Any mental health professional,
9. Any law-enforcement officer,
10. Any mediator eligible to receive court referrals pursuant to § 8.01-576.8,
11. Any professional staff person, not previously enumerated, employed by a private or state-operated hospital, institution or facility to which children have been committed or where children have been placed for care and treatment, and
12. Any person associated with or employed by any private organization responsible for the care, custody or control of children.

If neither the locality in which the child resides or where the abuse or neglect is believed to have occurred is known, then such report shall be made to the local department of the county or city where the abuse or neglect was discovered or to the Department of Social Services' toll-free child abuse and neglect hotline.

If an employee of the local department is suspected of abusing or neglecting a child, the report shall be made to the juvenile and domestic relations district court of the county or city where the abuse or neglect was discovered. Upon receipt of such a report by the court, the judge of the juvenile and domestic relations district court shall assign the report to a local department of social services that is not the employer of the suspected employee for investigation; or, if the judge believes that no local department of social services within a reasonable geographic distance can be impartial in investigating the reported case, the judge shall assign the report to the court service unit of his court for investigation. The judge may consult with the State Department of Social Services in selecting a local department to conduct the investigation.

If the information is received by a teacher, staff member, resident, intern or nurse in the course of professional services in a hospital, school or similar institution, such person may, in place of said report, immediately notify the person in charge of the institution or department, or his designee, who shall make such report forthwith.

The initial report may be an oral report but such report shall be reduced to writing by the child abuse coordinator of the local department on a form prescribed by the State Board of Social Services. The person required to make the report shall disclose all information which is the basis for his suspicion of abuse or neglect of the child and, upon request, shall make available to the child-protective services coordinator and the local department investigating the reported case of child abuse or neglect any records or reports which document the basis for the report.

A1. For purposes of subsection A, "reason to suspect that a child is abused or neglected" shall include (i) a finding made by an attending physician within seven days of a child's birth that the results of a blood or urine test conducted within forty-eight hours of the birth of the child indicate the presence of a controlled substance not prescribed for the mother by a physician, (ii) a finding by an attending physician made within forty-eight hours of a child's birth that the child was born dependent on a controlled substance which was not prescribed by a physician for the mother and has demonstrated withdrawal symptoms, (iii) a diagnosis by an attending physician made within seven days of a child's birth that the child has an illness, disease or condition which, to a reasonable degree of medical certainty, is attributable to in utero exposure to a controlled substance which was not prescribed by a physician for the mother or the child, or (iv) a diagnosis by an attending physician made within seven days of a child's birth that the child has fetal alcohol syndrome attributable to in utero exposure to alcohol. When "reason to suspect" is based upon this subsection, such fact shall be included in the report along with the facts relied upon by the person making the report.

B. Any person required to file a report pursuant to this section who fails to do so within seventy-two hours of his first suspicion of child abuse or neglect shall be fined not more than \$500 for the first failure and for any subsequent failures not less than \$100 nor more than \$1,000.